



2005 Court Clerk Training Institute

CRIMINAL COURTROOM - FELONY
PROCEDURES



ADMINISTRATIVE OFFICE
OF THE COURTS

EDUCATION DIVISION/CENTER FOR
JUDICIAL EDUCATION AND RESEARCH

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I. GENERAL CRIMINAL INFORMATION

A. THE CRIMINAL CASE PROCESS

1. Definitions

Criminal Action (PC 683) - the proceeding by which a party charged with a public offense is accused and brought to trial and punishment.

Crime (PC 15) - a public offense committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

Death

Imprisonment in state prison

Fine

Removal from office, or,

Disqualification to hold and enjoy any office of honor, trust or profit in this state.

Felony (PC 17(a)) - a crime which is punishable with death or by imprisonment in the state prison.

Misdemeanor (PC 17(a)) - every other crime or public offense is a misdemeanor except those offenses that are classified as infractions. Misdemeanors are punishable (PC 19) by:

Imprisonment in county jail not to exceed 1 year (or otherwise prescribed by law)

Fine not to exceed \$1,000.00, or

Both.

Infraction - A crime not punishable by imprisonment. If charged with an infraction, a person is not entitled to a trial by jury (PC 19.6).

Arrest - Taking a person into custody, in a case and in the manner authorized by law (PC 834).

2. Most Common Codes Used in Criminal Matters

- a. Penal Code
- b. Health and Safety Code
- c. Vehicle Code
- d. Welfare and Institutions Code
- e. Business and Professions Code
- f. Harbor and Navigations Code
- g. Fish and Game Code

3. How criminal cases are filed in Superior Court (preliminary level)

- a. Defendant is arrested and transported in custody to court within 48 hours excluding Sundays/holidays [(PC 825(a)(1))(Felony and Misdemeanor cases.)]
- b. Defendant is arrested and released on his/her own recognizance. (Felony - PC 1318.1(a), (b); Misdemeanor - PC 853.6)
- c. Defendant is arrested and posts bail to appear in court. (Felony and Misdemeanor - PC 1269b)
- d. Defendant is arrested and signs a citation agreeing to appear in court. (Misdemeanor - PC 853.6; Infraction PC 853.5)

4. How criminal cases are filed in Superior Court (felony trial level)

- a. Preliminary Hearing (Held to Answer) - Information
- b. Grand Jury True Bill – Indictment
- c. Certified Plea (PC 859a) – Certificate of Magistrate

B. ACCUSATORY PLEADINGS AND THEIR COMPONENTS

1. The Pleadings (Charging Documents)

- a. Complaint - a document submitted by the prosecutor and filed in a preliminary level court that lists and describes the alleged offenses committed by the defendant. (PC 740)

Infractions - PC 853.5

Misdemeanors - PC 853.6

Felonies - PC 806

- b. Information - a document submitted by the prosecutor and filed in a felony trial jurisdiction court which lists and describes the alleged offenses committed by the defendant (PC 949/PC 739).
- c. Indictment - an accusation by a grand jury charging a person with a crime. (PC 889).
- d. Charge - a formal statement of the accusations against a defendant (may be any of the above.)
 - 1) “Wobbler” - An offense that can be charged as a felony or misdemeanor; final plea or imposition of sentence will determine level of offense.
 - 2) “Wobblette” - An offense that can be charged as a misdemeanor or infraction; final plea or imposition of sentence will determine level of offense.

2. The Components (PC 950)

- a. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties.
- b. A statement of the public offense or offenses charged therein.
 - 1) Count - each individual accusation of a violation of a code section that is set forth in the accusatory pleading.
 - 2) Enhancement - allegation added to a count which, if proven true, increases the basic sentence for that count.
 - a) Enhancement may define a crime as a serious or violent felony (PC 1192.7(c) series).
 - b) Special circumstances, if proved true, would warrant the death penalty or life imprisonment without the possibility of parole. (PC 190.2 series)
 - 3) Felony Prior – allegation added to a case based on previous felony convictions which, if proven, either increases the basic sentence or affects eligibility for probation. These types of priors include but are not limited to the following:
 - a) No probation prior – an allegation the defendant has been previously convicted of a felony and therefore cannot be granted probation if convicted on this felony or there are limitations on the court’s power to grant probation. (PC 1203(e)(4); PC 1203.08; PC 1203(k); PC 1203.07(a)(11))
 - b) Prison prior – each previous felony conviction that resulted in a prior prison sentence except where the defendant has remained free of both prison custody and the commission of an offense that results in a felony conviction for a period of five years. This allegation carries an additional term of 1 year. (PC 667.5(b)).
 - c) Serious felony – any person who has been convicted of a serious felony who previously has been convicted of a serious felony shall receive an additional term of 5 years to be served consecutive and in addition to the sentence imposed by the court for the present offense. Charges that qualify as “serious felonies” are listed in PC 1192.7(c). (PC 667(a)(1))

- d) Violent felony – any person convicted of a violent felony with a prior violent felony conviction shall receive an additional term of 3 years to be served consecutive and in addition to the sentence imposed by the court for the present offense. Charges which qualify as “violent felonies” are listed in section PC 667.5(c). (PC 667.5(a))
- e) Strike prior – a prior charged under PC 667 or PC 1170.12 alleging a serious or violent felony prior conviction which if proven will authorize higher sentencing possibilities.
 - i) **1st strike** – serious or violent felony conviction that standing alone has no present significance. It will become significant if defendant suffers a second felony conviction (whether or not the present offense is a serious or violent felony conviction.)
 - ii) **2nd strike** – punishment for current felony conviction is doubled [PC 667(d) & (e)(1); PC 1170.12(c)(1)]
 - iii) **3rd strike** – punishment for current felony conviction is the maximum of the following [PC 667(d) & (e)(2); PC 1170.12(c)(2)]:
 - Triple the Base Term
 - Life imprisonment with minimum 25 years
 - Term determined by the court pursuant to PC 1170 for the underlying conviction, including any enhancement
- f) Theft prior – an allegation that defendant has been previously convicted of a theft crime under PC 666 (petty theft, grand theft, auto theft, burglary, car jacking, robbery, or felony receipt of stolen property) and subsequently convicted of a petit theft will result in additional sentencing penalties, specifically, imprisonment in the county jail not exceeding one year, or in the state prison.

- g) Auto Theft with a prior – an allegation that the defendant has been previously convicted of auto theft under VC 10851, or felony grand theft of a vehicle, motor vehicle, or construction equipment as defined in the Penal Code, or a vessel as defined in the Harbor and Navigation Code. A subsequent conviction of this theft will result in additional sentencing penalties, specifically, imprisonment in the state prison for a term of two, three, or four years, and a fine of \$10,000. (PC 666.5)
 - h) Drug prior (HS 11370.2) – an allegation that defendant has been previously convicted of, or for each prior felony conviction of conspiracy to violate Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.6, 11380, 11380.5 or 11383. Any conviction of this section will result in additional full, separate, and consecutive three-year term, whether or not the prior conviction resulted in a term of imprisonment.
- 4) Misdemeanor Prior – an allegation added to a case based on previous misdemeanor convictions which, if proven, increases the basic sentence or makes the subsequent filing a felony. For example:
- a) Subsequent convictions within 10 years
 - i) VC 23152(a), (b) – Driving under the influence of alcohol or drugs (4th offense = felony filing)
 - ii) VC 23153(a), (b) – DUI and causing bodily injury (3rd offense = felony filing)
 - b) Subsequent convictions for PC 314.1 (lewd or obscene conduct) will result in a felony filing/conviction.

3. Amended Pleadings

- a. An amended accusatory pleading may be filed by the District Attorney (PC 1009).
- b. The amendment may be effected by:
 - 1) Interlineations (write in change, initial, date of amendment)
 - 2) Filing of amended Complaint, Information, or Indictment
 - 3) Filing of amendment to Information/Indictment

4. TIME LINE -FELONIES

FELONY COMMITTED

ARREST ON FELONY CHARGE

ARRAIGNMENT ON COMPLAIN
Within 2 court days of Arrest, PC 825, 48 hours

PRELIMINARY HEARING / HELD TO ANSWER
Within 10 court days of Arraignment, PC 859b

REPORTER'S TRANSCRIPT OF
PRELIMINARY HEARING
Within 10 days of Prelim. Hearing

INFORMATION FILED IN
SUPERIOR COURT
Within 15 days of Prelim. Hearing
PC 860, CRC 4.110

PRELIMINARY HEARING / HELD TO ANSWER
Within 10 court days of Arraignment, PC 859b

PRELIMINARY HEARING / HELD TO ANSWER
Within 10 court days of Arraignment, PC 859b

PRELIMINARY HEARING / HELD TO ANSWER
Within 10 court days of Arraignment, PC 859b

C. PRELIMINARY LEVEL COURT PROCEEDINGS

1. Arraignment on Complaint (PC 988, PC 989)

Definition: An arraignment is the first criminal hearing in the Superior Court at the preliminary level. At the arraignment, the defendant must be apprised of the charges against him/her and enter a plea. On Felony cases, the defendant **must** be present [PC 977(b)(1)].

2. Setting of Dates

- a. Readiness Conference [CRC 4.112(a)]/Felony Disposition Hearing/Pretrial
- b. Preliminary Hearing within 10 court days [PC 859b; PC 871.6]
[Must be within 60 days (859b)]

NOTE: CCP 12 – Computation of Time. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

3. Preliminary Examination Hearing (Felonies)

Purpose: To determine if probable cause exists to believe that the defendant has committed a felony [PC 866(b)]

- a. Preliminary Examination Hearing
 - 1) Prosecutor/People present evidence – witnesses and exhibits
 - 2) Witnesses to be sworn and examined in the presence of the defendant and may be cross-examined (PC 865)
 - 3) At the conclusion of the Prosecutor's/People's case, the defense may call witnesses to be sworn and examined (PC 866)
 - 4) The Court may exclude all witnesses who have not been examined. The court may direct the witnesses to be separated and admonish them not to discuss the testimony with each other (PC 867)
 - 5) Preliminary hearings are open to the public. The magistrate may find that it is necessary to close the hearing (PC 868)
 - 6) At the conclusion of all evidence presented, the Prosecutor/People and Defense counsel may argue the cause

b. Results

- 1) Court finds no crime committed and/or no sufficient cause to believe the defendant guilty. Court will discharge the defendant and dismiss the case. (PC 871)
- 2) Court reduces charge to a misdemeanor. Defendant is held for trial in Superior Court at the preliminary level. [PC 17(b)]
- 3) Defendant pleads guilty and case is certified to Superior Court at the superior court level. (certified plea)
- 4) Defendant is held to answer and bound over to Superior Court at the superior court level. [PC 872 (a)] In this instance the court will:
 - a) Set date for arraignment in Superior Court at the superior court level within 15 days.
 - b) Address the custody status of the defendant [PC 873, PC 875]

Meanwhile...

The court reporter must **file a transcript** of the preliminary hearing within 10 days [PC 869(e)]

The Prosecutor/People must file the Information within 15 days of the Preliminary Hearing [PC 860, CRC 4.110]

NOTE: The preliminary hearing shall be completed at one session or the complaint dismissed unless the Court, for good cause shown by affidavit postpones it. The postponement shall not be for more than 10 days unless [PC 861(a)]:

1. The defendant personally waives right to a continuous preliminary examination
2. The prosecution establishes good cause for a postponement beyond the 10-day period. If the Court grants the postponement beyond the 10 court day period, if the defendant is in custody, he/she shall be released. [PC 859(b)]
3. The preliminary examination shall not be postponed for more than 60 days from the date the postponement was granted unless the defendant consents. [PC 859(b)]
4. The court may conduct brief court matters as long as the court's time is substantially devoted to the preliminary examination hearing.

4. Preliminary Examination Hearing Minutes

a. Sequence

Minute entries need to be made and time may be noted when:

- 1) Court convenes each day
- 2) For all recesses
- 3) Adjournment at the end of the day

b. Minute Heading

Heading may contain:

- 1) Current Date
- 2) Court name
- 3) Division/Department number
- 4) Names of court staff members
- 5) Name of court reporter

c. Case information for Minutes

Case information to be included in minutes may contain:

- 1) Case number
- 2) Case title
- 3) Attorneys appearing for each party
- 4) Defendant's appearance
- 5) If an interpreter is present, include his/her name, the language being interpreted, whether or not certified and whether or not administered oath or has an oath on file with the court. [CRC 984.2(e)]

Note: Only a certified interpreter may have an oath on file.

d. Body of Minutes

Must reflect all occurrences of the hearing such as:

- 1) Names of all witnesses and on whose behalf called
- 2) Exhibit Information:
 - a) Number/letter
 - b) Offering party
 - c) Description (examples)
 - i. "A photograph of a red Honda Prelude"
 - ii. "A copy of a contract dated August 14, 1996"
 - d) Status
 - i. Identification (marked for Identification)
 - ii. Received/Admitted (admitted into Evidence)
- 3) Stipulations (examples)
 - a) "Parties stipulate for preliminary hearing purposes only that the contraband seized contained cocaine"
 - b) "Parties stipulate for preliminary hearing purposes only that the blood alcohol level of the defendant when booked at the Orange County Jail was .15"
- 4) Waivers (example):
 - a) "Defendant waives his/her right to a continuous preliminary hearing"
- 5) Motions
- 6) Court orders, rulings, findings
- 7) Future hearing date(s), time(s), places(s)
- 8) Held to Answer [PC 872(a)]

NOTE: If the defendant is held to answer at the conclusion of the preliminary hearing, the magistrate must complete a (Held to Answer) commitment. [PC 876]

5. Waiver of Preliminary Hearing

Hearing/Minutes

- a. PC 860 allows a defendant to waive his/her right to a preliminary examination hearing.
- b. The People/Prosecutor and the Court must consent to the waiver.
- c. Upon completion of the waiver, the court must make the order to hold the defendant to answer for arraignment in the Superior Court.
- d. A Held to Answer commitment must be prepared (PC 876 & PC 877).
- e. The People/Prosecutor must file the Information within 15 days thereafter.
[CRC 4.110(1)]

D. GRAND JURY PROCEEDINGS (PC 888-945)

1. Definitions

- a. Grand Jury - a body of the required number of persons returned from the citizens of the county before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county. (PC 888)
 - 1) 23 jurors in counties over 4,000,000 [PC 888.2(a)]
 - 2) 11 jurors in counties of 20,000 or less [PC 888.2(b)]
 - 3) 19 jurors in all other counties [PC 888.2(c)]
- b. Indictment - an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense. (PC 889)

2. Areas of Inquiry

- a. Offenses and matters of civil concern (PC 888)
- b. Offenses known to any member of the grand jury (PC 918)
- c. Management of local prisons and misconduct of public officers (PC 919)
- d. Sales and transfers of land (PC 920)
- e. Any criminal matter at the request of the Attorney General (PC 923)/ District Attorney (PC 917)
- f. County operations, accounts and records (PC 925) and city or joint powers agencies (PC 925a)

3. Secrecy of Proceedings

- a. No persons may be present except those specified by statute. (PC 939)
- b. Any disclosure of grand jury proceedings before the arrest of the defendant is a misdemeanor. (PC 891, PC 924)

4. Finding and Endorsement as a "True Bill" (PC 940)

- a. Indictment shall be endorsed as a "true bill".
- b. Endorsement shall be signed by the grand jury foreman.
- c. Indictment shall list the witnesses that appeared before the grand jury. (PC 943)

5. Presentation and Filing of Indictment (PC 940)

- a. Court inquires of presiding juror as to the number of concurring votes.
- b. The minimum number of concurring votes pursuant to statute follows:
 - 1) 14 of 23 grand jury panel members in counties of over 4,000,000
 - 2) 8 of 11 grand jury panel members in counties of 20,000 or less
 - 3) 12 of 19 grand jury panel members for all other counties
- c. Court makes a finding that each indictment is a True Bill.
- d. Court directs the clerk to file the indictments and issue the warrants.

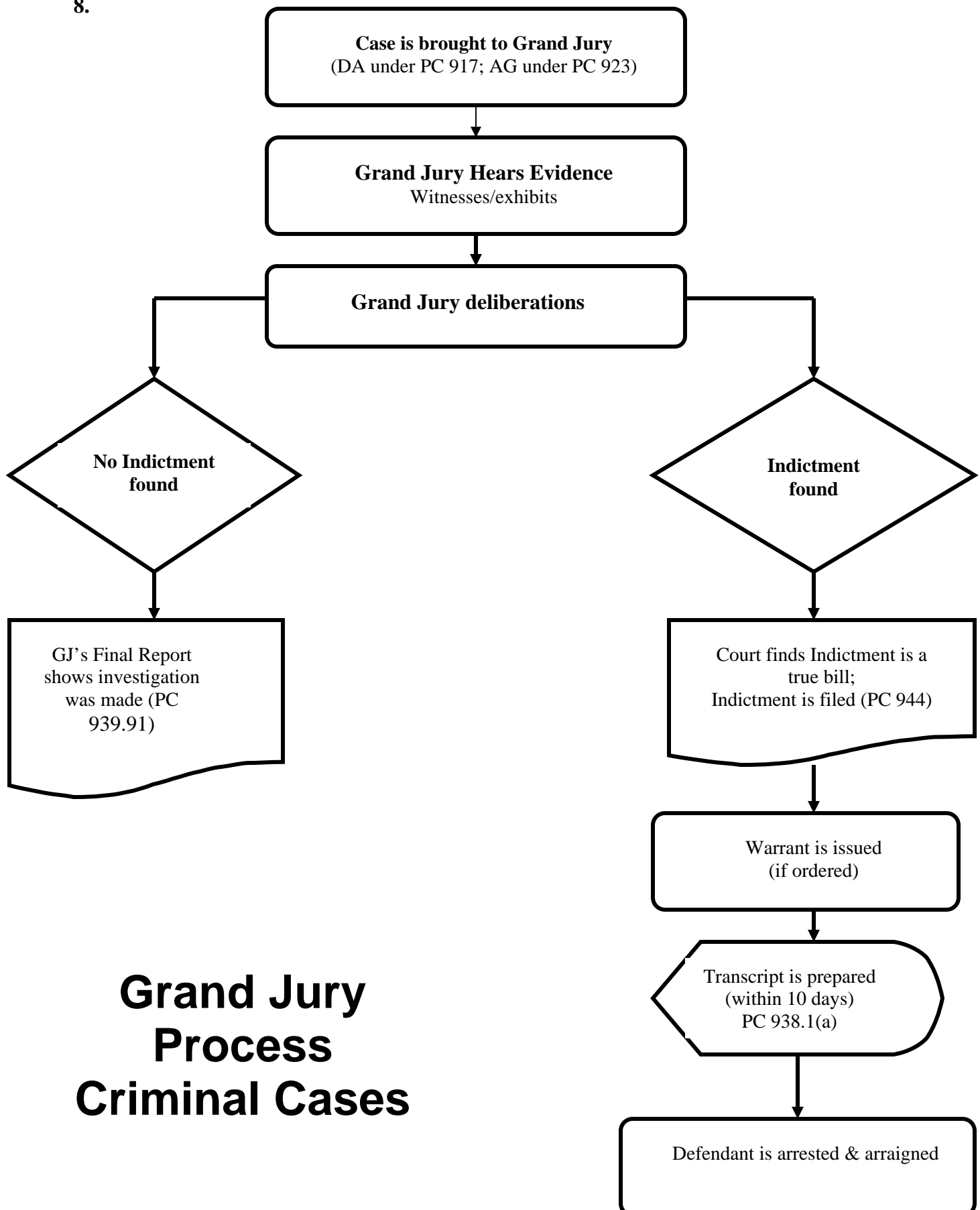
6. Service of Arrest Warrants on Indictment

- a. Defendant in custody – warrant issued, arraignment in superior court set within two court days.
- b. Defendant not in custody – arrest warrant is issued and delivered for service.
- c. The indictment remains confidential until the defendant is arrested or surrenders himself to the court.

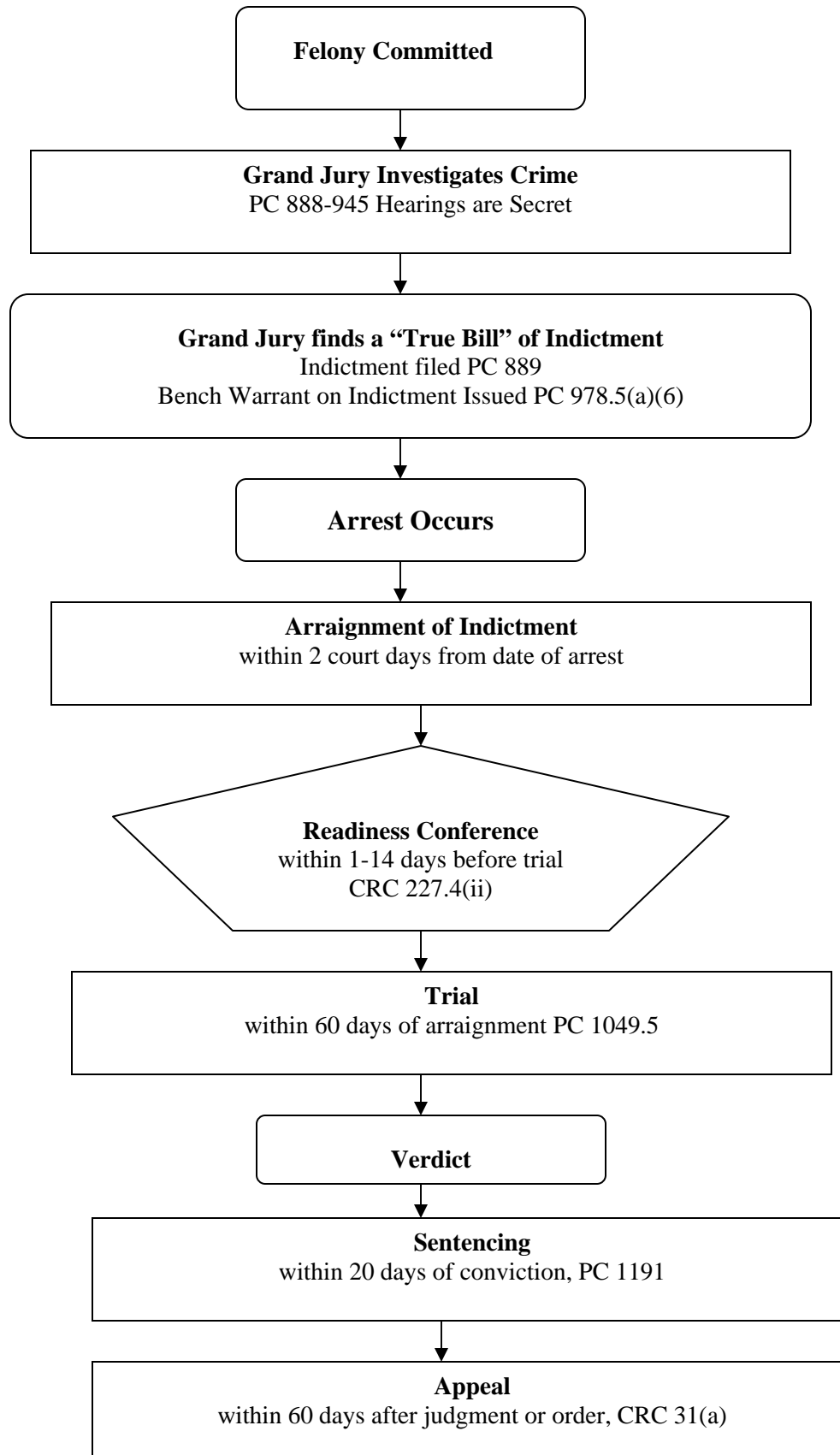
7. Grand Jury Transcript

- a. Grand Jury reporter must file a transcript of the testimony heard by the grand jury within 10 days of the filing of the indictment (PC 938.1(a))
- b. Copies are distributed to counsel upon filing with the court.
- c. Original does not become open to public for 10 days after last defendant picks up his copy. (PC 938.1(b)) Counsel has this 10 day period to file a motion to seal the transcript permanently

8.



9. TIME LINE- INDICTMENTS



E. MINUTE ORDERS

1. Definition and Statute Requirements

- a. Minute order - a memorandum of what takes place in court, made by authority of the court. (*Black's Law Dictionary*)
- b. Minutes are to be maintained by the clerk as part of the permanent record of the court. (GC 69844)
- c. Minutes constitute the only official record of the actions of the court. (*Meskeil v. Culver City Unified School District* (1970) 12 Cal.App.3rd 815, 821)

2. Minute Order Form (CRC 201)

a. Paper

- 1) Recycled, white or unbleached (CRC 201(b))
- 2) 8 ½ x 11 inches in size (CRC 201(c))

b. Print (CRC 201(c))

- 1) Not smaller than 12 points
- 2) Blue-black or black color ink
- 3) Equivalent to Courier, Times or Helvetica

c. Pages must be (CRC 201(c))

- 1) Punched with two holes (2 ½ inches apart) in the center of the page, 5/8 inches from the top
- 2) Numbered consecutively at the bottom. If minute orders are produced electronically, they may not be numbered at the bottom of the page.

3. Preparation

- a. Should be prepared within the time parameters established by statute and the court.
- b. Should be composed using correct grammar and composition, written English [CCP 185(A)] acceptable abbreviations (CCP 186).
- c. Should contain accurate spelling and punctuation.
- d. Should maintain a consistent format.
- e. Should use concise wording.
- f. Should be neatly typed or handwritten per court policy.

4. Components

a. Heading

- 1) Current date
- 2) Court Name
- 3) Department number
- 4) Names of court staff members
 - a) Judge
 - b) Court Clerk
 - d) Court Reporter
 - e) Bailiff
- 5) Case Information
 - a) Case number
 - b) DA number (if assigned and dictated by court policy)
 - c) True name of defendant
 - d) Violations/Charges, if required
- 6) Nature of proceedings (arraignment, jury trial, etc.)
 - a) Day of day
 - b) Beginning and ending custody status

b. Body of Minute Order

- 1) Appearances
- 2) Summary of Events that Occurred
- 3) Closing Events

5. The Particulars

a. Appearances

1) Appearances of Parties

a) Prosecuting party (PC 684)

b) Defendant (PC 685)

2) Name of counsel and agency/law firm

3) Defendant(s)

a) appearing pro per

b) appearing with counsel

c) appearing by counsel

4) Probation Officer

5) Interpreters, if used

a) Include name of interpreter(s) and whether they are certified or not (CRC 984.2)

b) Foreign language being translated [185(a) CCP]

c) Name of person needing the interpreter (defendant, witness, etc.)

b. Summary of Events that Occurred

1) Entry of Plea (PC 1017)

2) Admission/Denial of Priors (PC 1025)

3) Motions

a) Moving Party

b) Ruling (sustained/overruled)

c) Grounds, if any

4) Advisement of Constitutional Rights

5) Stipulations

- a) “Parties stipulate that the defendant drives a blue Toyota truck.”
- b) “Parties stipulate that on June 14, 1996, rain fell between 4:00 p.m. and 6:00 p.m.”

6) Waivers

7) Jury Information

- a) Panel(s) present for jury selection
- b) Jurors sworn re:
 - i) Qualifications [CCP 232(a)]
 - ii) To try the case [CCP 232(b)]
- c) Jury’s presence/absence during the proceedings
- d) Jury deliberations
- e) Jury discharged at conclusion of case
- f) Absence of any of the jurors for any reason
- g) Seating an alternate juror

8) Admonishments to the jury

9) Witnesses sworn and testified

- a) State full name of witness. When titles are used include first name.
- b) Include on whose behalf the witness was called.

10) Evidence identified and received

- a) Specify the offering party.
- b) List the identifying number/letter.
- c) Give a brief description of the item:
 - i) “A color photograph of a blue Toyota truck.”
 - ii) “A copy of a letter dated June 14, 1996.”
- d) Indicate the exhibit’s status:
 - i) Marked for identification purposes.
 - ii) Received into evidence.
 - iii) By reference (indicate where).

11) Disposition of verdict/court’s finding (PC 1164)

- a) guilty
- b) not guilty

12) Referrals

- a) To whom
- b) For what purpose
- c) When report is to be submitted to the court

c) Closing Events

- 1) Adjournment of the day’s proceedings
- 2) Future hearing dates (date, time, dept./div.)
- 3) Defendant’s Status
 - a) In custody; sheriff ordered to return defendant to court.
 - b) At liberty; defendant ordered to return (OR/Bail/Probation)

6. Recording Time

- a. Time should be noted (not mandatory):
 - 1) When court convenes each day
 - 2) When court declares all recesses
 - 3) When events affect the jury:
 - a) Jury assembles in courtroom at a time different from the day's proceedings
 - b) Jury commences deliberations
 - c) Jury deliberations:
 - i) Jury assembles each day
 - ii) Jury recesses for breaks/lunch
 - iii) Jury returns to courtroom for whatever reason (questions, further instructions)
 - iv) Jury adjourns each day
 - d) Jury returns with a verdict
 - 4) When court adjourns at the end of the day.
- b. Time may be noted:
 - 1) When the jury panel is sworn
 - a) Before commencement of voir dire
 - b) To try the case.
 - 2) When the bailiff is sworn to take charge of the jury before deliberations commence.
- c. Start and stop time of certain events may not be required in all courts.

II. DEFENDANT STATUS

A. CUSTODY STATUS

1. Custody Options

a. At Liberty

- 1) Own Recognizance (O.R.) (PC 1318)
- 2) Bail (include amount and type)
- 3) On Probation
- 4) Outpatient (PC1600-1620)
- 5) Deferred Entry of Judgment (Diversion)

b) In Custody

- 1) Bail set at a certain amount
- 2) No bail set

2. Other Custody Items

a. Remanded

The defendant is returned to the care and custody of the Sheriff/Marshal or designated law enforcement officer in the following situations:

- 1) At the end of each hearing if in custody
- 2) At any hearing if the defendant is "at liberty" and one of the following things occur:
 - a) Bail is increased
 - b) There has been a violation of one or more conditions of the O.R. release
 - c) Bail is exonerated

b. Release Orders

- 1) The Court may order the defendant released from custody and placed on an "at liberty" status at any stage of the proceedings.
- 2) If the defendant is acquitted or the case is dismissed, the Court shall order the defendant released.

B. BAIL (PC 1268-1320)

1. Definition

A security given by or for a person in custody to ensure his/her appearance in court when so ordered.

2. Fixing the Amount

- a. PC 1269b(b) prescribes that bail will be fixed (set) on the following documents for use in the following instances:
 - 1) Schedule of bail (PC 1269(c))
 - 2) Court's order admitting to bail
 - 3) Warrant of arrest
 - 4) Setting, Reducing, or Denying Bail (PC 1275)
- b. Main factors considered by Court (PC 1275)
 - 1) Protection of the public
 - 2) Seriousness of offense charged
 - a) alleged injury to the victim
 - b) alleged threats to victim(s) or any witness(es)
 - c) alleged use of a firearm or deadly weapon
 - d) alleged use or possession of a controlled substance by the defendant
 - e) for HS 11350 violations, Court must consider the amount of controlled substance involved in the commission of the crime
 - f) whether the defendant is currently on bail for an alleged violation of HS 11350

- 3) Defendant's previous criminal history
- 4) Flight risk of defendant
- c. Bail Set Below Bail Schedule on Serious/Violent Felony (PC 1275(c))
 - 1) Court shall make a finding of unusual circumstances
 - 2) Finding must be set on the record
 - 3) "Unusual circumstances" does not include the following:
 - a) defendant made all prior court appearances
 - b) no new offenses

3. Feloniously Obtained Bail (PC 1275.1)

- a. Bail thought to be feloniously obtained cannot be accepted until the court has made a finding the funds used to meet bail have not been feloniously obtained.
- b. Bail hold can be ordered based on one of the following:
 - 1) Peace officer submits declaration of probable cause executed under penalty of perjury.
 - 2) Prosecuting attorney submits declaration of probable cause executed under penalty of perjury.
 - 3) Court has probable cause to believe funds to be used for bail were feloniously obtained.
- c. Court finds probable cause exists:
 - 1) Defendant and his counsel are entitled to a copy of the probable cause declaration.
 - 2) Defendant has burden of proof to show by preponderance of the evidence that the funds to be used for bail have not been feloniously obtained.

- 3) Probable cause hearing may be closed.
 - a) Request may be made by party providing any portion of the bail funds.
 - b) Request is made to allow privacy of financial assets of the party.
- 4) If the defendant meets the burden of proof:
 - a) Bail hold will be released.
 - b) Defendant may be released under authority of the amount of the bail.
 - c) Court shall vacate hold order on condition the consideration used for the bail bond be approved by the Court.
- d. Probable cause declaration must be acted on within 24 hours or defendant must be released on posting the amount of bail set.
- e. Defendant can get a loan to obtain funds for bail provided the money used to repay the loan are not feloniously obtained.
- f. If the Defendant is found to have willfully misled the court regarding the source of the bail:
 - 1) Court can increase the bail.
 - 2) This fact can be considered at future bail hearings for this defendant.

4. Types of Bail

- a. Cash Bail (PC 1295) - full amount of bail set is posted
- b. Bail Bond/Undertaking (PC 1276)
 - 1) A guarantee by a corporate surety that a person will appear in court.
 - 2) A promise to pay a sum of money if the appearance is not made.

c. Property Bond (PC 1298)

- 1) Equity in real property, given as security to guarantee that a person will appear in court.
- 2) The equity of property, less encumbrances, must be equal to twice the amount of bail.

d. Appeal Bond (PC 1272)

- 1) The Court may set bail on appeal if there exists clear and convincing evidence that the defendant is not likely to flee.
- 2) It is discretionary as to felonies requiring notice to the prosecuting attorney at least five court days before the hearing (PC 1274).

5. Own Recognizance Release (PC 1270)

- a. A defendant is allowed to remain at liberty during pendency of a criminal action or proceeding. The release is based on a written agreement and promise to appear that is signed by the defendant.
- b. Criteria for Release
 - 1) Type of offense
 - 2) Criminal record
 - 3) Ties to the community
 - 4) Employment record
- c. Grounds for Revocation by the Court
 - 1) Failure to appear
 - 2) Violation of O.R. release agreement
 - 3) Arrested on a new case
 - 4) Nature of charges are changed

6. Posting Undertaking (Property Bond) as Bail

a. Definitions

- 1) Undertaking is a written guarantee by two sureties that the defendant will be present when ordered.
- 2) A surety is a party legally liable for a failure in the duty of another (i.e. a defendant's failure to appear at a court hearing when ordered to do so.)

b. Form of Undertaking/Affidavit for Justification

- 1) PC 1278 states form of undertaking for a complaint or information.
- 2) PC 1287 states form of undertaking for grand jury indictment.

c. Qualifications of Sureties (PC 1279; PC 1288)

- 1) Must be a resident, householder or freeholder within the state (court may refuse any person not a resident of the county where bail is offered).
- 2) Must be worth the amount specified on the Undertaking (the amount of bail). Most often the surety will use equity in real property.
 - a) The Court must hold a hearing if there is any doubt as to the worth of the surety.
 - b) Witnesses may be called to testify in open court.
 - c) The Court may allow more than two sureties if the total sum is sufficient for bail.

d. Affidavits for Justification of Bail (PC 1280; PC 1280a)

- 1) Surety must state they each qualify under PC 1279
- 2) The Affidavit must state the following:
 - a) The amount of the bail undertaking;
 - b) A notice that the recorded affidavit becomes an immediate lien on the real property described in the document;
 - c) The legal description and Assessor's parcel number of the real property used to justify the undertaking;
 - d) A statement the sureties have the qualifications listed in PC 1279.

e. Documents Required

1) Undertaking/Affidavit Justifying Undertaking

- a) Form should be notarized.
- b) Case number should be placed on the form.

2) Deed of Trust

- a) Beneficiary must be the Clerk of the Court, County of _____ or _____, Court Executive Officer, County of _____.
- b) Names of trustors and signatures on the Deed must match those on the Title Report and Promissory Note.
- c) Signatures must be notarized, the notarial seal must be legible and the notary's commission must be unexpired.
- d) The value of the equity must be equal to twice the amount of the cash deposit required (PC 1298).

3) Uniform Residential Appraisal Report

- a) Should be dated within one week of the Undertaking.
- b) Must be in writing and contain a statement of the appraiser's qualifications.
- c) Appraiser should be qualified from one of the following:
 - i) State of California - Office of Real Estate Appraisers
 - ii) Society of Real Estate Appraisers (Residential)
 - iii) M.A.I. (Commercial/Industrial Properties)

4) Promissory Note Secured by Deed of Trust

- a) Signatures must be the same as on Deed.
- b) Date of Note must be same as Deed of Trust.
- c) Amount of Note must be equal to the amount of bail.

5) Preliminary Title Report

- a) Should be dated within one week from date of the Undertaking.
- b) May be obtained from a California title company.

f. Review of Documents

- 1) May have a court hearing to determine the worth of the sureties.
- 2) Office personnel may review documents for completeness and forward to appropriate staff for review and approval.
- 3) Undertaking will be approved and signed by the judge.

g. Filing of Documents

- 1) Undertaking/Affidavit
 - a) Original Undertaking must be filed with Clerk of the Court within 24 hours of signature. (PC 1280b)
 - b) Court may order certified copy of Undertaking and Affidavit to be recorded at the County Recorder.

2) Deed of Trust

- a) Original Deed of Trust is returned to submitting party for recording at the County Recorder.
 - b) Copy of Deed of Trust may be made for placement with other Undertaking documents.
- 3) Remaining documents may be stamped “filed” and placed in the court file or some other safe location.

h. Discharge of the Defendant

- 1) The Court will prepare an Order for Release when one of the following occurs:
- a) Certified, recorded copies of the Undertaking and Deed of Trust with the Recorder’s instrument number affixed to them are submitted to the court;
- OR
- b) Original Deed of Trust and certified copy of the Undertaking with the Recorder’s Instrument number affixed to them are submitted to the court.
- 2) The Order for Release is forwarded to the officer retaining custody of the defendant and must be discharged immediately.

i. Special Forfeiture Notes

- 1) Notice of forfeiture must be given pursuant to PC 1305.
- 2) A summary judgment must also be entered against the sureties pursuant to PC 1306.
- 3) An abstract of judgment is recorded and the lien placed on the property now becomes a judgment lien. (PC 1280.1)
- 4) Lien may be satisfied by execution process set forth in CCP 680.010 et. seq.

j. Exoneration of Property Bonds

- 1) Court must exonerate the bond.
- 2) Court must sign an Order Releasing Lien (PC 1280.1)
 - a) Original Order will be filed with the Clerk of the Court.
 - b) Certified copy of the Order will be recorded with the County Recorder.
- 3) The Court Executive Officer signs the Reconveyance on back of the Deed of Trust (or a separate Deed of Reconveyance is prepared.)
- 4) Promissory Note is marked CANCELED across the face of the Note.
- 5) Make copies of Deed of Reconveyance and canceled Note for placement in the court file.
- 6) Return certified copy of Order Releasing Lien, canceled Note, and original Deed of Trust with signed reconveyance to submitting party. Lien will not be removed from the property until Order and Reconveyance have been recorded.

7. Bail Exoneration (PC 1195)

- a. The removal of responsibility from the depositor to guarantee the defendant's appearance.
- b. When exoneration occurs...
 - 1) O.R. release granted (PC 1304)
 - 2) Good cause surrender by depositor (PC 1300)
 - a) May be made with a certified copy of the undertaking of the bail.
 - b) May be made with certified copy of the certificate of deposit used as bail.
 - c) May be made with an affidavit by bail agent/surety containing all the information that would have been contained in the certified copy of the undertaking.

- 3) Defendant's motion to reduce bail granted.
- 4) Case dismissal/acquittal (PC 1303)
- 5) Judgment is pronounced (PC 1195)

8. Bail Forfeiture (PC 1305)

- a. The loss of money or property due to breach of a legal obligation.
- b. The Court shall **in open court** declare forfeited the undertaking of bail or the money or property deposited as bail if the defendant fails to appear when his/her presence has been lawfully required. (PC 1305(a))
- c. The clerk shall require the appropriate agency to enter each bench warrant issued on a private surety-bonded felony case into the National Crime Information Center (N.C.I.C.). (PC 980 & PC 1196)
- d. If the agency fails to enter the bench warrant into NCIC and the court finds that this failure prevented the bondsman from arresting/detaining the defendant, the forfeiture shall be set aside and the bond exonerated.
- e. Surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:
 - 1) The clerk fails to mail the notice of forfeiture within 30 days after the entry of the forfeiture. (PC 1305(b)(1))
 - 2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond. (PC 1305(b)(2))
 - 3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on bond. (PC 1305(b)(3))

Note: The 180-day period of forfeiture is extended 5 days to allow for mailing.

- f. If the defendant appears (voluntarily or in custody) within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice of forfeiture, the court shall vacate the order of forfeiture and exonerate the bond. (PC 1305(c)(1))
 - 1) Includes times where the defendant may be released from custody prior to court appearance.
 - 2) Includes arrests made outside of the county.

- g. In lieu of exonerating the bond, the court may order the bond reinstated and the defendant released on the same bond if both of the following conditions are met under PC 1305(c)(4)(A) & (B):

- 1) The bail agent is given notice and does not object.
- 2) The bail agent has not surrendered the defendant.

A re-assumption notice may be required by the court.

- h. If the court has reason to believe that sufficient excuse may exist for the defendant's failure to appear, the court continues the case for a period it deems reasonable to enable the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant. (PC 1305.1) The court then makes a finding that good cause has been found not to forfeit bail.
- i. If, after the court has made the order, the defendant without sufficient excuse, fails to appear on or before the continuance date set by the court, that bail shall be forfeited and a warrant for the defendant's arrest may be ordered issued. (PC 1305.1)
- j. The surety agent (or depositor) has 180 days to produce the defendant to the court. At the expiration of the 180-day period, if the defendant has not been surrendered or arrested, a summary judgment shall issue and the bail agent is responsible for paying the entire amount of the bond to the court. (PC 1306(a))
- 1) The bail agent may file a motion to extend the 180-day period (toll time) if he/she feels that an additional amount of time will be needed to secure the arrest of the defendant.
 - 2) The court, after hearing said motion, may extend the time for an additional 180-day period. (PC 1305.4)
 - 3) The summary judgment must be entered by the court within 90 days of the expiration of the 180-day forfeiture period, or the bond is exonerated. (PC 1306(c))

9. BAIL ACTION CHECKLIST

Y Was bail ordered?

- ☐ No bail set
- ☐ \$ amount
- ☐ PC 1275.1 Hold

Y Was bail posted?

- ☐ What type of bail?
- ☐ How much?
- ☐ Who posted?
- ☐ How will you reach them?

Y Was bail exonerated?

- ☐ How are the parties notified?
- ☐ What other documents/notices need to be done?

Y Was bail ordered forfeited?

- ☐ How are the parties notified?
- ☐ What other documents/notices need to be done?
- ☐ Who needs to be noticed?
- ☐ When is notice sent?
- ☐ Was the 180-day period tolled?
- ☐ What is sent when summary judgment is signed?
- ☐ Who sends the summary judgment notice?
- ☐ What happens when the forfeiture is vacated?
- ☐ What happens when bail is re-assumed?

C. WARRANTS

1. Arrest Warrants

a. Definition

An arrest warrant is a written order which is made on behalf of the state and is based upon a complaint issued pursuant to statute and/or court rule and which commands law enforcement officer to arrest a person and bring him before a magistrate. (*Black's Law Dictionary*)

b. When Issued (PC 813(a))

- 1) Complaint is filed charging a public offense.
- 2) Magistrate is satisfied reasonable grounds exist to believe defendant may have committed the crime.

c. Form of Arrest Warrant (PC 814)

- 1) Code provides basic language for the arrest warrant.
- 2) Form may include defendant's identification information to facilitate service of warrant.

d. Contents (PC 815)

- 1) Name of defendant, or if unknown, defendant may be designated by any name,
- 2) Date of issuance,
- 3) City/county where issued,
- 4) Signature of magistrate, judge, justice or other issuing authority with the title of his office, and
- 5) The name of the court or issuing agency.

e. Amount of Bail (PC 815a)

- 1) Magistrate must fix bail at time of issuance of warrant.
- 2) Bail must be reasonable and sufficient for the appearance of the defendant after arrest.
- 3) Warrant must contain a signed statement from the issuing magistrate stating the amount of bail. Statement may be in words to the effect of “The defendant is to be admitted to bail in the sum of _____ dollars.”

f. Time of Service (PC 840)

- 1) Arrest for a felony may be made at any time of day or night.
- 2) Arrest for misdemeanor or infraction cannot be made during hours of 10:00 p.m. to 6:00 a.m. unless:
 - a) Arrest is made without a warrant per PC 836 or 837.
 - b) Arrest is made in a public place.
 - c) Arrest is made when person is in custody pursuant to another lawful arrest.
 - d) Arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.

2. Bench Warrants

a. Definition

Process issued by the court itself, or “from the bench”, for the attachment or arrest of a person; either in case of contempt, or where an indictment has been found, or to bring in a witness who does not obey the subpoena. (*Black’s Law Dictionary*)

b. When Issued (PC 978.5(a))

- 1) Defendant fails to appear as required by law:
 - a) Ordered by court to personally appear at specific date and time;
 - b) Released on bail and ordered by court or person authorized to accept bail or personally appear at specific date and time;
 - c) Released from custody on own recognizance and promises to personally appear at specific date and time;
 - d) Released from custody by citation and signed a promise to appear at a specific date and time;
 - e) Authorized to appear by counsel and ordered to appear at specific date and time;
 - f) Ordered to appear at a specific date and time after information or indictment has been filed.
- 2) Defendant was discharged on bail and failed to appear (PC 979).

c. Form of Bench Warrant (PC 981)

- 1) Code provides basic language for bench warrant.
- 2) Form may include defendant's identification information to facilitate service of warrant.

d. Amount of Bail (PC 982)

- 1) Standard Bail Schedule (PC 1269b(b))
- 2) Bench warrant must contain an endorsement signed by the clerk to the following effect: "The defendant is to be admitted to bail in the sum of _____ dollars."

- 3) Criteria considered when setting bail (PC 1275(a))
 - a) Seriousness of offense.
 - b) Protection of the public.
 - c) Defendant's prior criminal history.
 - d) Ties to the community.
 - e) Funds not feloniously obtained.
 - f) Alleged injury to the victim.
 - g) Alleged threats to the victim or witness.
 - h) Alleged use of a firearm or other deadly weapon.
 - i) Alleged use or possession of controlled substances.
- 4) Hold (PC 1275.1)

District Attorney may place a PC 1275.1 hold on the defendant to preclude the defendant from posting bail. A hearing will be held to determine the origin of bail funds.

e. Bench Warrant Issued and Held

- 1) Bench warrant is not physically prepared but "stayed" to a specific date.
- 2) Forfeiture of bail still goes forward unless it is deferred (PC 1305.1) for specific reasons stated on the record. The court states a finding of good cause not to forfeit bail.
- 3) When defendant appears, the bench warrant is quashed or withdrawn.
- 4) When bench warrant is to be prepared for service, it is released.

f. Bench Warrant Issued Forthwith

- 1) Clerk must note order in minutes.
- 2) Issuing clerk will start procedure to issue warrant.

g. Recall of Warrant

- 1) Definition: to take back, cancel, revoke.
- 2) Recall occurs when:
 - a) Bench warrant was served (defendant arrested).
 - b) Defendant surrendered (walked into court on his/her own).
- 3) The order to recall a bench warrant must be clearly documented in the minutes.

3. Attachment of Defaulters — Civil Bench Warrants

- a. Definition: An order issued for the arrest of an individual, but not then defendant (a witness, attorney, custodian of records ...)
- b. Counsel requesting warrant should provide a description of the subject.
- c. At the conclusion of the trial or hearing, the clerk should bring the outstanding attachment to the attention of the court to determine if it should remain active. It is not automatically recalled as the court may wish to take action against the person if and when they are located.

4. Summons

a. Definition

A summons in a criminal action is a writ, directed to the sheriff or other proper officer, requiring him to notify the person named that an action has been commenced against him in the court whence the writ issues, and that he is required to appear, on a day named, and answer the complaint in such action. (*Black's Law Dictionary*)

b. When Issued (PC 813(a))

- 1) Complaint is filed charging a public offense.
- 2) Magistrate is satisfied reasonable grounds exist to believe defendant may have committed the crime.
- 3) Prosecutor requests a summons be issued in lieu of an arrest warrant.

c. When Summons May Not Be Issued (PC 813(e))

- 1) Offense charged involves violence.
- 2) Offense charged involves a firearm.
- 3) Offense charged involves resisting arrest.
- 4) One or more outstanding arrest warrants for the person exist.
- 5) The prosecution of the offense would be jeopardized.
- 6) There is a reasonable likelihood that the offenses would continue or that the safety of persons or property would be imminently endangered.
- 7) There is reason to believe the person would not appear.
- 8) Form of Summons (PC 813(B))
- 9) Code provides basic language for the summons.
- 10) Summons shall include notice to the defendant to complete the booking process prior to making the first court appearance and instructions how to complete the booking process.
- 11) Summons should also include a provision for certification of the booking process.

d. Failure to Appear (PC 813(c))

- 1) Bench warrant for arrest shall issue.
- 2) FTA shall not be used in a future proceeding if proof of actual receipt of the summons by the defendant is not present.

e. Failure to Be Booked (PC 813(d))

- 1) Defendant appears in court as summoned without first being booked.
- 2) Defendant shall be ordered to complete the booking process.

f. Service of Summons (PC 816a)

- 1) May be made by any person authorized to serve process.
- 2) Copy of summons shall be delivered to the defendant.
- 3) Duplicate copy shall be filed with the magistrate.

III. ARRAIGNMENT TO PRETRIAL

A. SUPERIOR COURT ARRAIGNMENT [PC 988]

1. Definition

- a. The proceedings in which an accused person is brought before a judge to hear the charges filed against him or her and to enter a plea.
- b. The first criminal hearing in superior court

2. Elements

- a. Determining defendant's true name and date of birth if the defendant appears to have been a minor at the time the offense was committed
- b. Appointment/re-appointment of counsel (PC 987.2)
- c. Reading of the accusatory pleading (or waiver of reading)
- d. Delivering a true copy of the accusatory pleading to the defendant
- e. Advising defendant of constitutional rights
- f. Asking defendant to enter a plea or having counsel enter not guilty plea on his/her behalf (PC 1017, PC 1024, PC 1025)

3. Six Possible Pleas (PC 1016)

a. Guilty

- 1) Definition - A formal admission in court as to guilt which a defendant may make if he or she does so intelligently and voluntarily. *Black's Law Dictionary, 5th Edition.*
- 2) Effect - No trial on the issue of guilt is necessary. A trial on the issue of penalty may be held on cases in which special circumstances are alleged.

b. Not Guilty

- 1) Definition - A plea entered by the accused to a criminal charge. *Black's Law Dictionary, 5th Edition.*
- 2) Effect - Since the defendant has denied the charges, the case will be set for trial to determine the defendant's innocence or guilt.

c. Nolo Contendere

- 1) Definition - "I will not contest it." A plea in criminal court which has a similar legal effect as pleading guilty. The defendant does not admit or deny the charges, though a fine or sentence may be imposed. *Black's Law Dictionary, 5th Edition*
- 2) Effect - A nolo plea cannot be used against the defendant in a civil action based upon the same acts. This plea is subject to the approval of the court. After the court approves the plea, the court will find the defendant guilty.
- 3) A nolo plea cannot be entered with respect to cases processed through Deferred Entry of Judgment. [PC 1000.1(3)]

d. Former Judgment of Conviction or Acquittal (Double Jeopardy)
[PC 687]

- 1) Definition - A person cannot be tried for the offense more than once; this is fundamental common law and constitutional right of the defendant affording protection against his being again tried for the same offenses. *Black's Law Dictionary, 5th Edition.*
- 2) Effect - The Court must hold a hearing to determine the validity of the claim. The issue is "Is the prior conviction or acquittal true?" If yes, the prosecuting attorney may move to dismiss the case or the Court must dismiss the case. If the issue is not true, the defendant must enter a new plea.

e. Once in Jeopardy

- 1) Definition - A phrase used to express the condition of a person charged with a crime who has once already, by legal proceedings, been put in danger of conviction and punishment for the same offense.
- 2) Effect - The Court must hold a hearing to determine the validity of the claim. The issue is "Was the defendant previously in jeopardy for this same offense?" If yes, the prosecuting attorney may move to dismiss the case or the Court must dismiss the case. If the issue is not true, the defendant must enter a new plea.

f. Not Guilty by Reason of Insanity (PC 1026)

- 1) Definition - A plea entered by the accused denying he committed the alleged charges since he was insane at the time the crime was committed.
- 2) Effect - Case proceeds on the not guilty plea and on the presumption that no other plea (reason of insanity) was entered. If the defendant is found guilty, then the case proceeds on the issue of the sanity of the defendant at the time the crime was committed.

4. Mutual Discovery Orders (PC 1054 et. Seq.)

- a. Counsel are mandated by statute to conduct timely pretrial discovery.
- b. Purpose of the statute is to limit the need for judicial enforcement of discovery rules.

5. Setting Future Dates (CRC 4.100)

- a. A motion hearing date or due date for all pretrial motions
- b. A readiness conference date, within 1-14 days before trial
- c. A trial date, within 60 days of arraignment (PC 1049.5, PC 1382)
 - 1) Defendant may waive the 60-day trial requirement
 - 2) Defendant may request or consent to a trial date set beyond the 60-day limit, without a waiver. If this occurs, the defendant will be brought to trial on the date set or within 10 days thereafter. (PC 1382(2)(B))
 - 3) Time waivers **must** be placed in the minutes.
 - 4) When the court finds good cause to set beyond 60 days without a time waiver, the reason must be stated in the minute order.

NOTE: CCP 12 – Computation of Time. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

6. Information Filed

- a. Information must be filed within 15 days of the preliminary hearing. (PC 860, CRC 4.110)
- b. Failure to file an Information timely is grounds for dismissal of the case.

7. Defendant Fingerprint Cards (PC 992)

- a. Defendant must provide a right thumbprint after arraignment of a felony offense.
- b. Thumbprint is to be placed on Judicial Council Form CR-100.
- c. Fingerprint card will be filed in court file until sentencing.
- d. Fingerprint card will be attached to sentencing minute order and retained as a permanent record in the court file.

8. Preliminary Hearing Transcripts

- a. The court reporter must file a transcript of the Preliminary Hearing within 10 days. (PC 869(e))
- b. An original for the court file, a copy for the District Attorney and a copy for each defendant are submitted for filing.
- c. Preliminary Hearing Transcripts are not confidential.
- d. Transcripts can be used in conjunction with PC 995 and PC 1538.5 motions.

9. Defendant's Presence at Felony Hearings (PC 977(b)(1))

- a. Arraignment
- b. At the time of plea
- c. During the preliminary hearing
- d. At trial when evidence is taken
- e. At sentencing (except when sentenced under PC 1203.2a)
- f. At all other proceedings unless he/she executes, in open court, a written waiver of his/her right to be personally present. The written waiver must be approved by his/her counsel and filed with the court. (PC 977 Waiver)

10. REVIEW CHART FOR ARRAIGNMENTS

- ▶ Defendant is served with copy of Complaint/Information/Indictment
- ▶ Defendant's true name is determined
- ▶ Counsel is appointed if defendant is not represented
- ▶ Defendant acknowledges receipt of Complaint/Information/Indictment
- ▶ Defendant may or may not waive reading of Complaint/Information/Indictment and advisement of rights
- ▶ Defendant is arraigned
- ▶ Defendant enters a plea
- ▶ Motion to continue filed for purpose of filing a demurrer
- ▶ Case assigned to a department for all purposes OR Court assigns dates for trial, readiness conference, and last day to file motions
- ▶ Waiver of time if trial is set beyond 60 days
- ▶ Defendant remanded or ordered to return

OR

- ▶ Bench Warrant is issued for defendant's failure to appear at arraignment

B. PRE-TRIAL MOTIONS

1. Benefits to Parties and the Court

- a. Motion can dispose of the case entirely. No need for trial.
- b. Ruling may cause a change of plea. No need for trial.
- c. Issues are clarified and points of common ground are found. Trial will take less time.
- d. Discovery compliance.

2. Time for Filing

- a. Pretrial motions shall be served and filed 10 days prior to hearing date. (CRC 4.111)
- b. All opposing papers must be filed at least 5 days before the hearing.
- c. All reply papers must be filed at least 2 court days before hearing.
- d. Exceptions:
 - 1) Motions to continue criminal hearings require notice 2 court days in advance. (PC 1050)
 - 2) Motions for Discovery (Pitchess Motions) require 21 days notice pursuant to CCP 1005.
 - 3) Motions to Suppress Evidence (PC 1538.5) require service on the district attorney at least 10 judicial days prior to the hearing.
- e. Counsel requesting to file motions with less than 10 days notice must obtain an Order Shortening Time signed by the judge.
- f. Motions filed in preliminary level courts will follow local court rules for filing deadlines.

3. Motion Hearings

- a. Moving party has the burden of proof.
- b. Motions may be heard one of two ways:
 - 1) Orally by the court (counsel present oral arguments)
 - 2) Submitted on the written documents (or transcripts) already filed.

4. Ex-Parte Motions

- a. Definition: Submitted by one side without notice to the opposing party.
- b. For appointment of Investigator
- c. For appointment of Medical/Psychological Evaluations
- d. For appointment of Experts
- e. For additional funds to assist in the defense
- f. Capital case request for funds (PC 987.9)
 - 1) Capital case defendants may ask for funds to pay for investigators, experts, and others for the preparation and presentation of their defense under PC 987.9.
 - 2) Request for funds is made by affidavit.
 - 3) Existence and contents of affidavit are confidential.
 - 4) Affidavit will be reviewed at an in camera hearing.
 - 5) Order on funds disbursed by the court are confidential.
 - 6) Follow local court policy for placement of affidavits, supporting documents, minutes, and signed orders for funds under PC 987.9.

5. Minute Order Contents

- a. Nature of the proceedings
- b. Parties present, include first and last name
- c. Testimony given
- d. Exhibits introduced/received
- e. Rulings of the court
 - 1) May be granted or denied
 - 2) May be ruled on its entirety or in part
 - 3) May be taken under submission
- f. Disposition of the case
 - 1) Charges dismissed; defendant discharged as to this case only
(don't forget to vacate any future hearing dates or to exonerate any bail!)
 - 2) Pre-trial or trial date to remain

Tip: Make a copy of the face page of all written motions. Use the copy to keep track of matters before the bench.

6. Pretrial Motion Lists

List of common pretrial motions, described by both category and "case law" name, are included in Appendices III and IV.

C. PRE-TRIAL CONFERENCES

1. Benefits

- a. Conferences can dispose of the case entirely. No need for trial.
- b. Rulings may cause the defendant to change his/her plea. No need for trial.
- c. Issues are clarified and points of common ground are found. Trial will take less time.

2. Steps in Negotiation

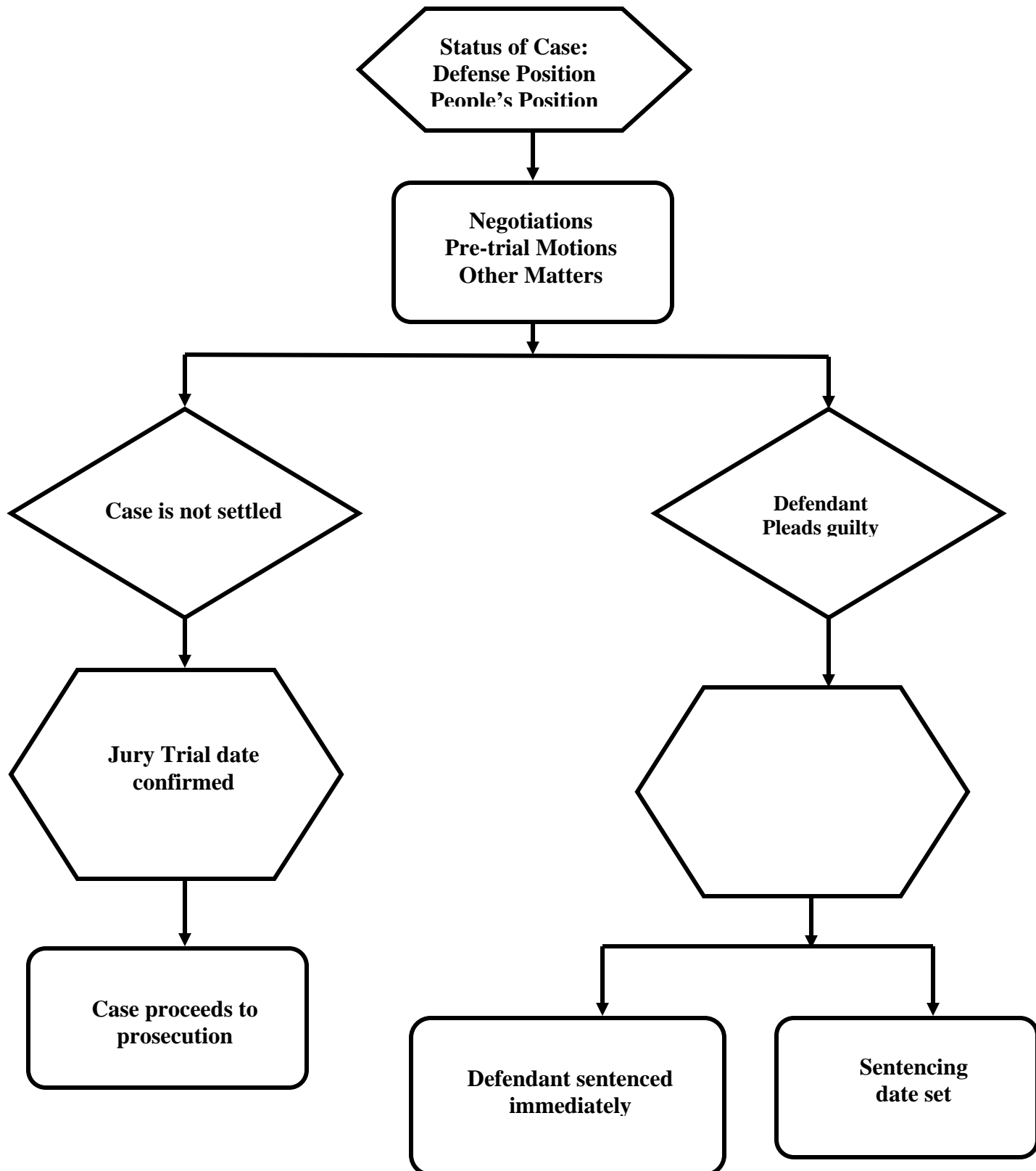
- a. Court and counsel confer off the record.
 - 1) Both sides present their perspective of and position on the case.
 - 2) Defense counsel initiates negotiations. Prosecutor may agree or make counter offer.
- b. Court can guide conference and make recommendations to keep negotiations from reaching an impasse.
- c. Defendant makes decision whether to accept or refuse negotiated plea.

3. Outcome

- a. Case is non-negotiable.
 - 1) Trial date is confirmed.
 - 2) Case proceeds to prosecution.
- b. An agreement is reached and defendant changes his/her plea.

Felony pleas of guilty/no contest are made in open court on the record.

4. READINESS CONFERENCE OVERVIEW



D. EVENTS FOR CHANGE OF PLEA

1. Court questions defendant as to:

- a. Defendant's true name
- b. Any influence of alcohol/drugs
- c. If defendant has any questions
- d. That defendant has an understanding of relinquished rights (Boykin-Tahl). The record must show explicit waivers of these constitutional rights:
 - 1) To trial by jury
 - 2) To confront and cross-examine witnesses
 - 3) Against self-incrimination
- e. Addition Inquires for Package Deal
 - 1) Whether the inducement for the plea is proper
 - 2) The factual basis for the guilty plea
 - 3) The nature and degree of coerciveness
 - 4) Whether or not a promise of leniency to a third party was a significant consideration of defendant in choosing to plead guilty
- f. That defendant advised of and understands consequences of plea.
 - 1) Maximum penalties
 - 2) Imposition of restitution fine under PC 1202.4
 - 3) Probation ineligibility
 - 4) Maximum parole period and parole violations

- 5) Registration requirements, if any
 - a) Sex offenders (PC 290)
 - b) Arson offenders (PC 457.1)
 - c) Narcotics offenders (HS 11590)
 - d) Gang member (PC 186.30)
- 6) Revocation or suspension of driving privilege
- 7) Potential effect on immigration status (PC 1016.5)
- 8) Strike prior
- g. If any promises or threats made regarding entering the plea
- h. If plea was being entered voluntarily
- i. If defendant has an understanding of the impact of probation or the maximum punishment for the crime

2. Acceptance of Plea

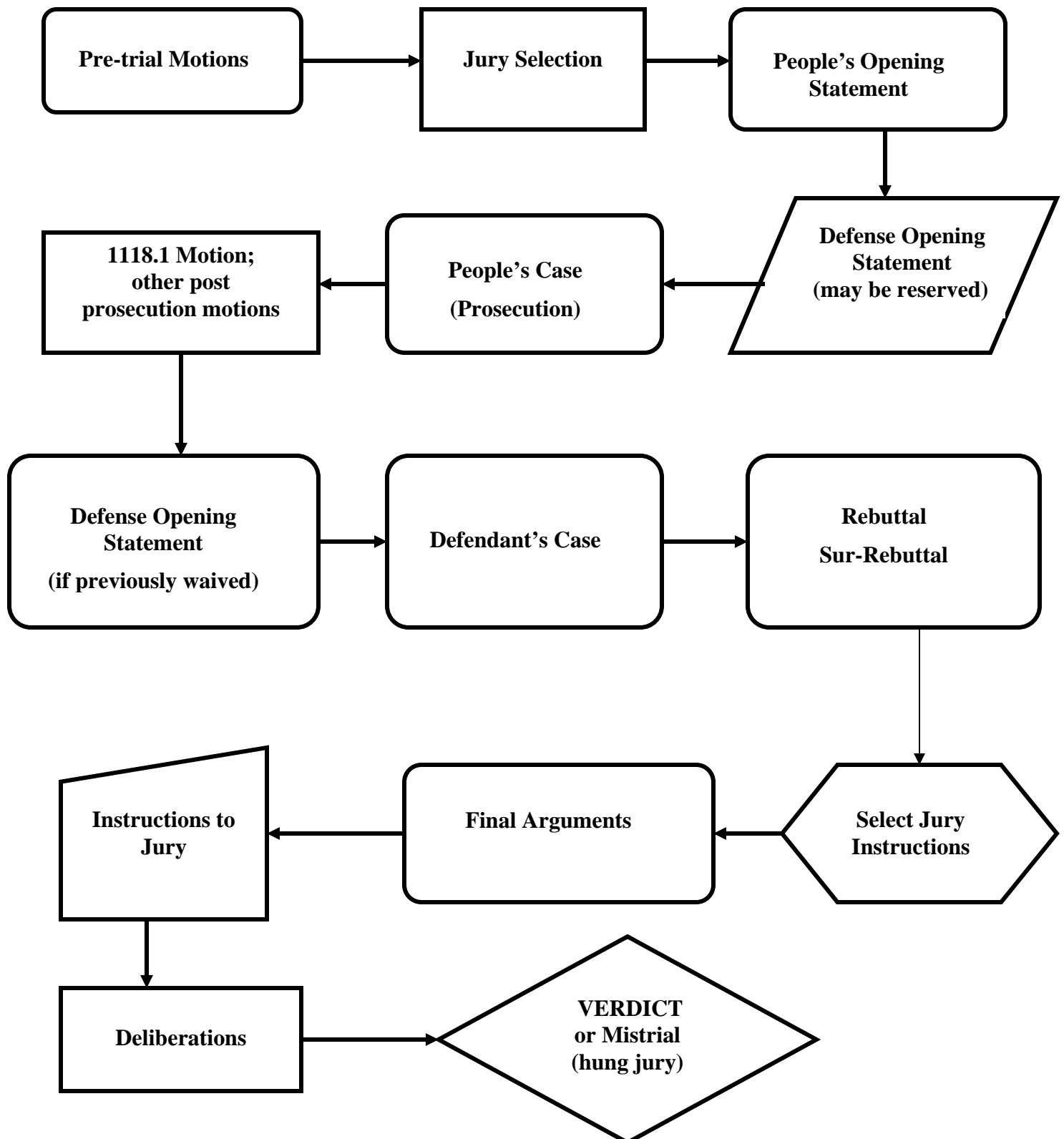
- a. Court recites plea bargain.
- b. Court explains the court may consider any dismissed counts when sentencing and in ordering restitution. (Harvey Waiver).
- c. If the defendant is to be sentenced to the upper state prison term, the Court explains the sixth amendment right to a jury trial requires that any aggravating fact used to increase a defendant's sentence must be found by a jury, not a judge unless this right is waived by the defendant. (Blakely Waiver)
- d. Court reads count(s) to which the defendant will plead.
- e. Defendant must orally enter the same plea. Counsel will state satisfaction with the plea.
- f. Court finds factual basis for the plea.
- g. Defendant must be advised that he/she has the right to be sentenced by the judge taking the plea and if that will not be the case, he/she must waive that right. (Arbuckle Waiver)
- h. Plea is accepted by Court. Prosecutor will move to dismiss any remaining counts and allegations.

3. Set Sentencing Hearing

- a. Probation referral, request or waive preparation of a pre-sentence report.
- b. Setting time for pronouncement of judgment within 20 judicial days (PC 1191, PC 859a, 1462), unless time is waived.

IV. FELONY TRIALS

A. CRIMINAL JURY TRIAL OVERVIEW



IV. FELONY TRIALS

B. CLERK'S PREPARATION FOR TRIAL

1. Obtain all volumes of the case file(s).

2. Defendant Status

- a. Determine/check custody status of the defendant(s).
- b. Inform the bailiff of the case assignment, the number of defendants, and the custody status.

3. Interpreter Needs

- a. Determine if the defendant or any witnesses will require an interpreter.
- b. Determine if the language to be interpreted will require a certified or non-certified interpreter. (CRC 984.2) [JUD FORM IN-100, IN-110, IN-120]
- c. Determine if the court will need to conduct a voir dire hearing for a non-certified interpreter.

4. Defendant's True Name/Pending Charges

- a. Verify the true name of the defendant
- b. Determine the pending charges listed on the minutes against the Information/Indictment (the accusatory pleading).

5. Verify Names of Counsel

- a. Check the names of counsel.
- b. Get business cards, if possible, or obtain phone numbers and addresses.

6. Prepare a Case Information Sheet for Court Staff

- a. Make a copy of the of the Information/Indictment and counsel's business cards for the bailiff, the court reporter, and yourself.
- b. You can copy the business cards on the front or last page of the Information, depending upon space available.

7. Pending Motions

- a. Check the file for any previously-filed in limine motions.
- b. Ask counsel if there are any new in limine motions.
- c. Copy the front page of each motion for your reference.

8. Exhibits

- a. Check in the file for a list of preliminary hearing exhibits.
- b. Ask if there are preliminary hearing exhibits so that you can prepare for picking them up.
- c. Ask counsel if there are additional exhibits that need to be pre-marked (if your court pre-marks exhibits.)

9. Notify the Court of the Case Assignment

- a. Inform the Judge that a case has been assigned for trial.
- b. Give the Judge the case file and in limine motions.
- c. Ask how the Judge wishes to proceed.

10. While court and counsel confer in chambers:

- a. Obtain the following:
 - 1) Preliminary hearing exhibits
 - 2) Preliminary hearing transcripts
 - 3) Subpoenaed records
- b. Prepare jury seating charts
- c. Prepare an envelope in which to seal jury information.

11. Call for Jury Panel

- a. Determine the number of prospective jurors needed for the case.
- b. When the Judge informs you that a jury panel is needed, call the Jury Commissioners' Office.

12. Witnesses

- a. Obtain the witness lists from counsel.
- b. Make copies for judge, clerk, reporter, and bailiff.

13. Check your work area

- a. Make sure your work area is secure.
- b. Don't leave out items that could be used as a weapon

C. TRIALS WITH PLEA OF INNOCENT

1. Types of Trials

- a. Jury Trial
- b. Court Trial

2. Sequence of Trial

- a. In Limine Motions (Jury trial only)
- b. Jury Selection (Jury trial only)
- c. Accusatory pleading read to jury [PC 1093(a)]
- d. Opening Statements [PC 1093(b)]
 - 1) People
 - 2) Defendant – gives, reserves or waives
- e. Evidence Phase (testimony, exhibits, and stipulations in lieu of testimony or exhibits. [PC 1093(c), PC 1093(d)]
 - 1) People's case-in-chief
 - 2) Defendant's case-in-chief
 - 3) People's rebuttal
 - 4) Defendant's rebuttal
- f. Closing Arguments [PC 1093(e)]
 - 1) People
 - 2) Defendant
 - 3) People's rebuttal

- g. Instruction read to Jury [PC 1093(f)]
- h. Jury deliberates
- i. Trial Dispositions
 - 1) Jury trial
 - a) Jury renders a verdict
 - b) Jury is unable to reach a verdict and the court declares a mistrial
 - c) The jury is thanked, released from admonishment, excused from further participation from this case, and court is adjourned.
 - 2) Court Trial
 - a) Court reviews the evidence and renders a decision, OR
 - b) Court takes case under submission and renders a written decision at a later date.

3. Motions in Limine

- a. Definition and Purpose
 - 1) Motions to be heard at the beginning of the trial.
 - 2) Used to determine what evidence will be presented to the jury (most commonly to exclude evidence from the jury)
- b. Common in Limine Motions
 - 1) Evidence Code 402 Motions - the existence of a preliminary fact is disputed. The existence or non-existence must be determined.
 - 2) Motion to Suppress Confession (EC 402(b)) - to withhold defendant's confession from the jury based on grounds that it was coerced and not intelligently made.
 - 3) Motion to Preclude (or Include) Testimony/Exhibit (EC 403) - to block evidence from the case, such as some particularly gruesome photographs or an expert's opinion, OR to include certain evidence, such as the probability that a third party was the actual culprit or the results of a polygraph test.

- 4) Motion for Severance - to sever the trial from co-defendant(s)
- 5) Motion to Bifurcate Priors - to have a separate trial on alleged priors (EC 352)
- 6) Motion to Exclude Witnesses - to keep witnesses out of the courtroom prior to their examinations. (EC 777 and/or PC 867)

4. Jury Selection (CCP 206 and CCP 237)

i. Jury Confidentiality

ALL Juror information is confidential in a criminal trial. This includes names, addresses, and phone numbers. This can be handled in a variety of ways depending upon each court's policy and procedure. The most common methods follow:

Method 1

- a) Juror names are never written in the minutes.
- b) The jurors are referred to by their seat numbers only.
- c) Because the jurors' names are used in open court during jury selection, the court reporter's notes will be ordered sealed at its conclusion.
- d) Seating charts used by counsel during voir dire may be collected and destroyed at its conclusion.
- e) A jury list showing the seated panel and alternates is prepared to preserve the record in the event of an appeal or a petition for the information. (CCP 237) The jury list will be sealed at the conclusion of the trial.
- f) All court documents containing the names of jurors (verdicts, jury notes, etc.) will be sealed at the conclusion of the trial. (CCP237(2))

OR

Method 2

There is no change in trial procedure. Jurors' names are treated in the normal manner during trial. They are written in the minutes and on related documents. At the end of the trial the clerk will proceed as follows:

- a) Edit the names from all minutes and court documents.
- b) Place redacted copies of the minutes and documents in the case file.
- c) Seal original minutes and court documents that mentioned jurors' names at the conclusion of the trial.

If minutes are entered on an automated system, the procedure described in Method 2 will be difficult, if not impossible to achieve.

ii. Preparation

- 1) Distribute Seating Charts.
- 2) Upon arrival of prospective jurors, welcome them to the courtroom, take roll, and administer the "Acknowledgement and Agreement" to the prospective jurors. (CCP 232(a))

iii. Introductory Procedure

- 1) Court introduces self, staff, counsel, and defendant.
- 2) Information/Indictment may be read or a statement of the nature of the case may be presented.
- 3) Names of potential witnesses are read.

iv. Jury Selection

At the discretion of the judge, the court may:

- 1) Examine 12 initial jurors
- 2) Examine 18 jurors (“six pack”)
- 3) Examine 24 jurors
- 4) Examine the entire panel of prospective jurors.

v. Types of Challenges

1) Challenge for Cause (CCP 225(b))

- a. CCP 225(b)(1)(A) - General disqualification that the juror is disqualified from serving on the trial.
- b. CCP 225(b)(1)(B) - Implied bias as, when the existence of the facts ascertained, in judgment of law disqualifies the juror.
- c. CCP 225(b)(1)(C) - Actual bias is the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party.
- d. By court - a juror is obviously not acceptable for this trial (pre-paid vacation, obvious bias, etc.)
- e. By counsel - the right to challenge a prospective juror for a specific reason.
- f. All challenges for cause must be made before peremptory challenges are used. (CCP 226(c))

2) Peremptory Challenge (CCP 231)

- a. If crime punishable by death or life imprisonment, each side is entitled to twenty peremptory challenges. [CCP 231(a)]
- b. If not crime punishable by death or life imprisonment, each side is entitled to ten peremptory challenges. [CCP 231(a)]

- c. For two or more defendants, ten (or twenty) joint plus five additional for each defendant. Prosecutor is entitled to challenges equal to the number of combined defense challenges. [CCP 231(a)]
- d. The right to challenge a prospective juror without assigning a reason for the challenge.
- e. Peremptory challenges commence with the Prosecutor/People.

j. Swearing the Jury to Try the Cause

- 1) All challenges have been exhausted and/or counsel are satisfied with the jury.
- 2) The Court will direct the clerk to administer the “Acknowledgment and Agreement” admonishment to the trial jurors. (CCP 232(b))

k. Selection of Alternate Jurors

- 1) The Court will determine whether or not alternate jurors are required, and, if so, how many.
- 2) Selection will proceed.
- 3) After the challenges are exhausted, or before if counsel are satisfied, the Court will direct the clerk to administer the “Acknowledgment and Agreement” admonishment to the trial alternate jurors. (CCP 232)

l. Reading of Information/Indictment (PC 1093)

- 1) Clerk reads Information/Indictment exclusive of prior allegations.
- 2) Reading of Information/Indictment is waived.

m. Jury Admonishment (PC 1122)

- 1) Court must admonish the sworn jury before the people's opening statement.
- 2) The admonishment states the jury's function and the court's instructions:
 - a) Not to discuss the case
 - b) Not to view the premises
 - c) Not to read or listen to news coverage of the case
 - d) Not to "sell their story" prior to and within 90 days of discharge from the case
 - e) Report any attempt to influence jurors
- 3) A notation that the admonishment was given must be made in the minutes.

5. Opening Statements

- a. A brief outline by counsel describing what the evidence will be and what it will prove (a "road map" of the trial).
- b. The Prosecution and the Defense are entitled to make opening statements before evidence is present.
- c. Sequence:
 - 1) Prosecution (People)
 - 2) Defense
- d. The Defense may choose to reserve opening statement until the defendant's case in chief.
- e. The Defense may choose to waive opening statement.

6. Evidence Phase

- a. Witness - one who is called to testify before a court.
 - 1) Types
 - a) Percipient
 - b) Expert
 - 2) Clerk must note in minutes:
 - a) Exact name of witness, including any title
 - b) Called on whose behalf
 - c) Whether adverse witness
 - d) Whether called out of order
 - e) Whether previously sworn

Red-Handed

The scene was San Diego Superior Court. Two men were on trial for armed robbery. An eyewitness took the stand, and the prosecutor moved carefully:

"So, you say you were at the scene when the robbery took place?"

"Yes."

"And you saw a vehicle leave at a high rate of speed?"

"Yes."

"And did you observe the occupants?"

"Yes, two men."

"And," the prosecutor boomed, "are those two men present in court today?"

At this point the two defendants sealed their fate. They raised their hands.

— Tom Blair in San Diego Union

- b. Exhibit - a physical object or document produced by a court ... as a voucher, or in proof of facts, ... and is marked for identification and ... made a part of the case. (*Black's Law Dictionary*) (See PC 1417-1417.8)
 - 1) Identified - The first time that an exhibit is referred to or given to a witness for review:
 - a) A tag or label is affixed with an identifying number or letter.
 - b) It is described on the record.
 - c) The number/letter, offering party, and description of exhibit must be listed in the minutes and on an exhibit list.
 - d) Once introduced, marked for identification only, or received/admitted into evidence, the exhibit becomes the sole responsibility of the clerk.(PC 1417)
 - 2) Received in Evidence
 - a) Counsel offer exhibits to be received in evidence.
 - b) Court rules on receipt of exhibits.
 - c) All exhibits received will be noted in the minutes and on the exhibit list.
 - d) The date the exhibit is received will be noted on the exhibit tag.
 - 3) Special Handling
 - a) Weapons, drugs, and valuables must be locked up during recesses and at the end of each day.
 - b) Guns must be fitted with trigger locks or otherwise made to be inoperable. Have bailiff check all weapons.
 - c) Syringes and bloodstained items should be pre-packaged in plastic bags or some other type of protective packaging.

- d) Notify Court of any exhibit that might cause a health hazard (see PC 1417.3 for special handling of toxic exhibits.) Note in minutes.
 - e) Any exhibit(s) returned are to be noted in minute order with name or agent retaining the exhibit(s) [PC 1417.2.]
- c. Motion for Judgment of Acquittal
 - 1) Prosecution concludes it's case-in-chief (or at the close of evidence on either side.)
 - 2) Defense makes a motion for the court to enter a judgment of acquittal based on the fact that the People failed to meet the burden of proof.
 - 3) Motion is made under PC 1118 in a court trial.
 - 4) Motion is made under PC 1118.1 in a jury trial.
 - 5) If PC 1118 or PC 1118.1 is granted, case is dismissed
 - 6) If PC 1118 or PC 1118.1 is denied, case proceeds to closing statements

7. Closing Argument

- a. Statements made by counsel in an attempt to persuade the jury, or the court, that the evidence proves the position of their client.
- b. Sequence:
 - 1) Prosecution/People
 - 2) Defense
 - 3) Prosecution/People's rebuttal

8. Jury Instruction

- a. Definition - written instructions to the jury pertaining to the law in the case.
- b. Selecting instructions:
 - 1) Counsel select jury instructions they feel pertain to the case.
 - 2) Court and counsel confer.
 - 3) Court hears argument regarding the instructions selected.
 - 4) Court rules as to the specific jury instructions that will be presented to the jury.

- c. All instructions must indicate the requesting party and be endorsed by the court. (CRC 229, PC 1127.)
- d. Refused and withdrawn instructions are retained by clerk for placement in the case file (PC 1127.)
- e. The agreed upon instructions (those to be given) are read to the jury by the Court.
- f. A clean copy of the given instructions, exclusive of any indication of the requesting party, are provided to the jury for reference during deliberations, upon request of the jury or discretion of court [PC 1093(f)]

9. Jury Deliberations

- a. Bailiff sworn to take charge of the jury.
- b. What goes in with the jury (PC 1137):
 - 1) A clean set of jury instructions, if requested by jury or ordered by court. (No indication of who requested the instruction)
 - 2) Verdict forms
 - a) Separate verdict forms (guilty or not guilty) for each count are provided.
 - b) Additional forms for lesser-included offenses, if applicable, are also included.
 - c) Content must conform to charging document.
 - 3) Exhibits
 - a) Exhibits received as evidence may go to the jury.
 - b) Exhibits that are marked for identification only do not go to the jury.
 - c) Sensitive exhibits (money, weapons, drugs, jewelry, or other valuables) should not go to the jury. The jury may request to see these items.
 - 4) Juror request/question blank forms
 - 5) Juror(s) own notes

- c. Alternate jurors
 - 1) Ordered to report to jury office and remain in jury lounge during deliberations.
 - 2) Ordered to be on telephone stand-by during deliberations.
- d. Notes Received from the Jury
 - 1) Note is given to the judge.
 - 2) Counsel is notified.
 - 3) Response prepared/hearing held:
 - a) Response may be in writing.
 - b) Jurors may be called back into the courtroom for a verbal response.
 - c) Jurors may request read-back of testimony [Presence of Judge for read-back not required (PC 1138.5.)]
 - 4) A minute entry is made regarding note/response.
 - 5) Note is numbered, filed and maintained in the court file.

10. Verdict/Mistrial

- a. Verdict
 - 1) Verdicts are reviewed by Court and given to the clerk.
[PC 1151, 1157, 1158, 1158a]
 - 2) All dated and signed verdict forms are placed in count number order.
 - 3) Verdicts are read in open court with defendant, counsel, and all jurors present.
 - a) Reading includes county, court, and cause depending on court policy.
 - b) Presiding juror's (foreperson's) name and title will also be read depending upon court policy re: juror identification information.
 - 4) At conclusion of verdicts, the court/clerk inquires of the jury:
 - a) Is this your verdict as read?
 - b) Jury responds as a group.

5) Polling the Jury

- a) A formal process asking each juror individually whether they agree with the verdict.
- b) May be requested by either party.
 - i) Use prepared jury list.
 - ii) Re-read the verdict.
 - iii) Ask jurors to answer yes or no to the questions:
“Juror #, is this your verdict?”
 - iv) Follow this procedure for each verdict.
 - v) Exact procedure may vary; follow your court’s instructions.
- c) Polling may be waived in its entirety.
 - i) Verdict(s) is/are recorded.
 - ii) Waiver is noted in the minutes.

6) Jury is thanked and excused from this case.

7) Signed original verdicts are file stamped and placed in the court file in a confidential envelope.

8) Redacted/sanitized copies of signed verdict are placed in the court file.

9) Original unsigned verdicts are also kept in the court file. Do not throw away forms.

b. Mistrial

- 1) Jury informs court that they are unable to reach a verdict.
- 2) Court declares a mistrial (Court obtains count/split – record in minute order.) [PC 1140]
- 3) Jury is thanked and excused from further service on this case.
- 4) Case is sent back to Presiding/Supervising Department for new dates to be set. (The case must go to trial within 60 days from the date of the mistrial.) [PC 1141]

11. Post-Verdict Matters

- a. Defendant, if found guilty, may waive a probation report and request immediate sentencing.
 - 1) Court will sentence defendant forthwith.
 - 2) See Sentencing Section for sentencing options.
- b. Defendant may make a motion for new trial. [PC 1181]
 - 1) May be oral or written.
 - 2) Must be ruled upon prior to sentencing.
 - 3) See Sentencing Section for grounds to make a motion for new trial.

12. Setting a Sentencing Date

- a. Court will set a date for sentencing within 20 judicial days. (PC 1191)
- b. Court may refer the matter to a probation officer for a probation and sentencing report.
- c. Clerk should prepare a referral to the Probation Department.

13. Status of Defendant

- a. Finding of not guilty, case dismissed:
 - 1) Defendant will be released from custody and a Release Order prepared.
 - 2) Defendant released on bail will have bail exonerated. (PC 1384)
- b. Finding of guilty, sentencing date set:
 - 1) Court will review defendant's custody status.
 - a) A defendant released on bail or OR status must have that status revoked and be taken into custody, unless court finds good cause (PC 1166.)
 - i) Clerk will prepare a Remand Order for the defendant.
 - ii) Remand Order will include the amount of bail.
 - b) An in custody defendant with bail set may be remanded on a "no bail" Remand Order pending sentencing.

NOTE: See Appendix for suggested phrases for trial minutes.

D. TRIALS WITH PLEA OF NGI (PC 1026)

1. Definition

- a. A trial heard when defendant's plea is not guilty by reason of insanity.
- b. Trial process is the same to this point.

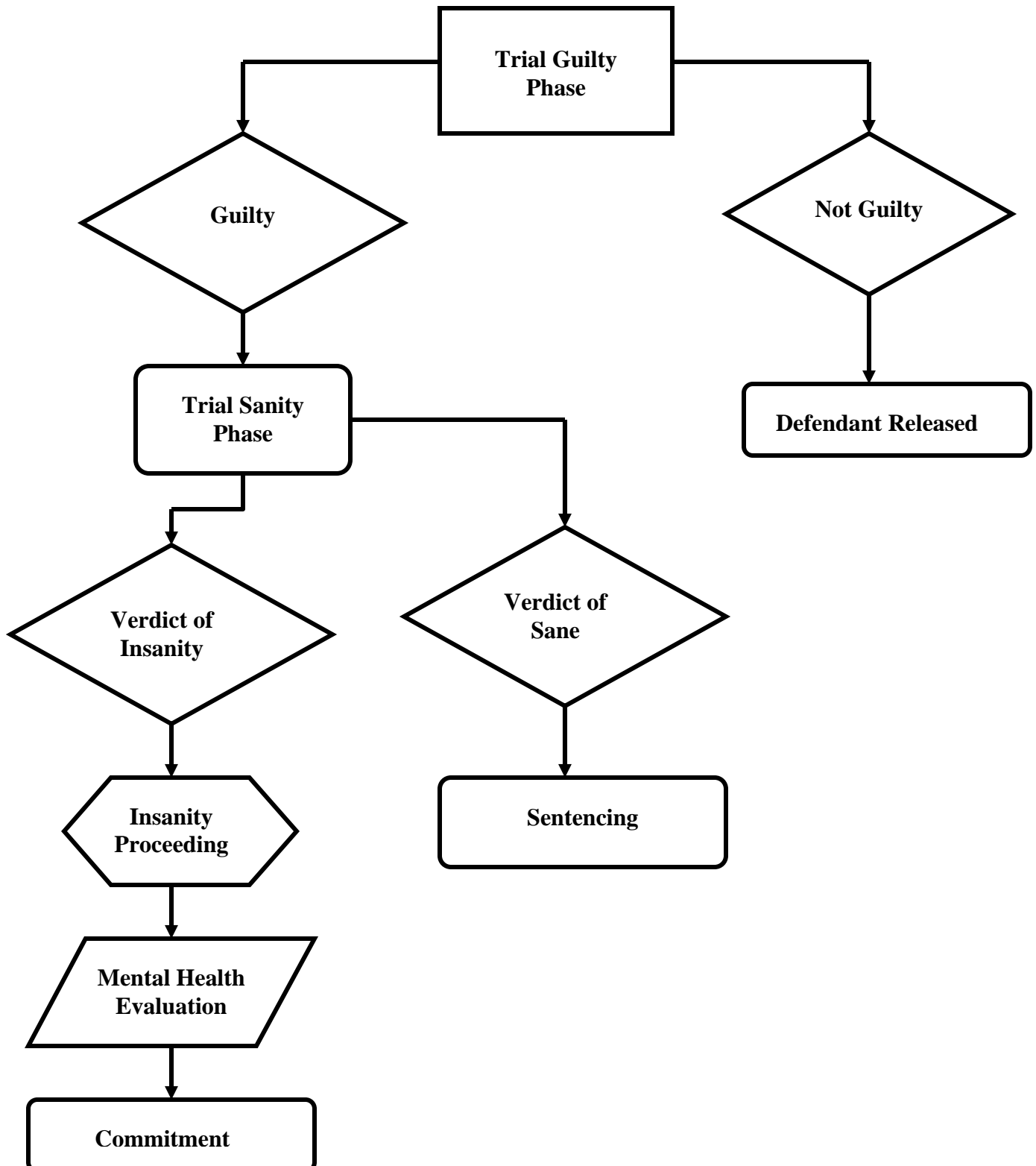
2. Phases

- a. Guilty Phase - the question of the defendant's guilt is determined.
- b. Sanity Phase - Defendant is found guilty and trial proceeds to determine the question of the defendant's sanity at the time the crime was committed.
 - 1) This issue is not to be confused with the issue of the defendant's mental state during the trial (mental competence, PC 1368).
 - 2) Same jury that determined defendant's guilt will be used to determine defendant's sanity.

3. Outcome

- a. Sane - defendant will be sentenced according to law.
- b. Insane - defendant will be committed to state hospital or other appropriate treatment facility.

4. TRIAL PHASES – NOT GUILTY BY REASON OF INSANITY CASES [PC 1026]



V. FELONY SENTENCING

A. COURT CLERK'S DUTIES AT SENTENCING (CRC 4.300-4.480)

1. File Preparation

- a. Collect the following:
 - 1) Department Calendar, if any
 - 2) Case File(s)
 - 3) Minutes
 - 4) Probation Reports, if any
 - 5) Proposed Probation Orders, if any
 - 6) Letters/Statements in Mitigation/Aggravation
 - 7) Written motions, petitions, pleadings, reports, etc., if any
- b. Make any necessary copies of:
 - 1) Calendar
 - 2) Probation recommendation, for yourself
 - 3) Title page of any motion for yourself

2. Research the Case File

- a. Verify all information printed on the calendar and/or minutes by checking against appropriate court documents.

Check this information:

- 1) Names (defendant, attorneys)
- 2) Case Number
- 3) Charges
- 4) Counts (convicted of)
- 5) Enhancements (found true)

by reviewing these documents:

- 1) Minutes from previous hearing
- 2) Charging documents
- 3) Change of plea form, if any
- 4) Verdict(s), if any
- 5) Court findings, if any

- b. Make all corrections/additions necessary.

- c. Use post-it notes to mark the major documents in the case file:

- 1) Information/Indictment
- 2) Amended complaining document(s), if any
- 3) Bail bond, if any

- d. Make notes regarding the following:

- 1) Status of the defendant - Is he/she in or out of custody? If at liberty, on what basis?
- 2) Bail - What is the amount, if any, that was posted?
- 3) Bond - What type, if any, was posted? Make a BIG note for yourself to remember to exonerate the bond.

- 4) Interpreter - Note if one is needed, and in what language. Arrange to have an interpreter available for the hearing. Will the court need to conduct voir dire for a non-certified interpreter? (See CRC 984.2)
- 5) Probation Report - Note if a probation report was ordered but not received.
- 6) Bench warrant - Note if one was ordered but held. If defendant appears, you must see that the bench warrant is not issued.
- 7) Counts and enhancements - Research and understand all of the counts and enhancements of which the defendant was convicted. (The dismissed counts are of no concern.)
- 8) Priors - Know how many, what kind, and the impact:
 - a) Prison Priors
 - i) PC 667.5(b) = 1 year extra
 - ii) PC 667.5(a) = 3 years extra
 - b) Serious Felony Priors
PC 667(a)(1) = 5 years extra
 - c) Strike Priors
 - i) 2nd Strike (PC 667(e)(1) or PC 1170.12(c)(1)) = Double the Base Term
 - ii) 3rd Strike (PC 667(e)(2) or PC 1170.12(c)(2)) = term of life with a minimum of the indeterminate sentence calculated as the greater of:
 - Triple the Base Term
 - 25 years
 - Term determined by the court pursuant to PC 1170 for the underlying conviction, including any enhancement
 - d) Drug Priors
HS 11370.2 = 3 years extra

3. Review by Judge

- a. Assemble all reports, evaluations, letters, statements, and any other documents submitted for the judge to review.
- b. Give them to the judge for review prior to the hearing.

4. Sentencing Minute Orders

- a. Appearances of counsel and parties
- b. Any motions made, by whom, and rulings thereon
- c. The names of any persons who address the court (victim, kin, friends)
- d. Court findings. For example, the Court must make certain findings when sentencing a defendant to CYA
- e. The grant or denial of probation
- f. If probation is granted:
 - 1) Imposition of sentence suspended or execution of sentence suspended
 - 2) Type of probation: informal (unsupervised); formal (supervised)
 - 3) Length of probation
 - 4) Terms and conditions of probation:
 - a) Time in custody
 - i) Date and time to report to jail if not taken immediately into custody
 - ii) Date and time to report to jail and for release if defendant is to serve weekends
 - b) Days of public service
 - c) Hours of volunteer work
 - d) Monetary punishments including any payment schedule
 - e) Orders for defendant to pay for probation (PC 1203.1b “shall”) and incarceration (PC 1203.1c “may”)
 - f) Finding and order for defendant to pay attorney fees (PC 987.5 or PC 987.8)
 - g) Fourth Amendment waiver

- h) Vehicle interlock device (VC 23235, 23246)
 - i) AIDS Testing per PC 1202.1
 - j) Registration requirements (PC 186.30, PC 290, PC 457.1, HS 11590)
 - k) Testing and fingerprinting per PC 296
 - l) Denial of visitation with minor victim per PC 1202.05. The name and date of birth of the minor victim shall be transmitted to the Department of Corrections. The original order is maintained in the confidential portion of the file.
 - m) Custody credits
 - n) Future hearing information
 - o) Defendant's custody status
 - p) Exoneration of bond, if any
 - q) Any other court orders
- g. If sentenced to state prison:
- 1) The code section number including subsection(s), the time imposed, and sentence relationship of each count, enhancement, and prior the defendant was convicted.
 - 2) If other than the middle term imposed, a court finding that circumstances in mitigation/aggravation outweigh those in mitigation/aggravation. (CRC 4.406(b)(4))
 - 3) If any stays, the authority for the stay (i.e., PC 654, PC 1170.1(a), PC 1385).
 - 4) Total time imposed
 - 5) Monetary punishments (restitution, restitution fines, parole fine, lab fees)
 - 6) Order for AIDS testing per PC 1202.1
 - 7) Denial of visitation with minor victim per PC 1202.05 (Remember the name and date of birth of victim should be included only in the confidential file. The date of birth of the victim is maintained in the redacted file.)

- 8) Registration requirements (PC 186.30-gang, PC 290-sex, PC 457.1-arson, HS 11590-drug)
- 9) Custody worktime credits (PC 4019; PC 2933.1, PC 2933.2)
- 10) Advisement regarding parole (CRC 4.433(e), PC 1170(c))
- 11) Appeal rights, if after a trial (CRC 4.305, CR 4.470)
- 12) Any Court recommendations to the CDC regarding defendant's housing
- 13) Order for report to the Registrar of Voters to suspend voting privilege
- 14) Submit DNA specimens as required in PC 296 for law enforcement identification analysis

5. Prepare Post Judgment Forms

- a. Prepare any additional orders (see section on Post Conviction Orders) or abstracts of judgment.
- b. Distribute paperwork timely.

B. FELONY PRE-SENTENCING MATTERS

1. Time for Pronouncement of Judgment (PC 1191)

- a. Must be within 20 judicial days of plea, finding, or verdict of guilty.
- b. May be extended 10 days to hear a motion for new trial. (PC 1181)
- c. May be further extended until any proceedings to grant or deny probation have been disposed of.
- d. Time waivers must be taken if sentencing is set later than statute dictates. (PC 1191)
- e. Court may also extend sentencing date if one of the following occurs:
 - 1) Defendant is referred for diagnostic evaluation pursuant to PC 1203.03 or WI 707.2;
 - 2) Defendant's competency is questioned by the court.

2. Defendant's Presence (PC 1193)

- a. Defendant must be personally present unless the following provisions are met:
 - 1) Defendant states in open court on the record or in a notarized writing that judgment be pronounced against him in his absence; and
 - 2) Defendant is represented by counsel when judgment is pronounced; and
 - 3) Court approves defendant's absence during pronouncement of judgment.
- b. Court may pronounce judgment in defendant's absence if the following occurs:
 - 1) Reasonable diligence has been made to procure defendant's presence; and
 - 2) Court finds it is in the interest of justice to pronounce judgment in defendant's absence.

c. Defense Counsel

- 1) Should be present with the defendant.
- 2) Ensures the sentence imposed is not based on misinformation or misreading of the court records.

d. Sentencing Judge

- 1) Must be the same judge that took the plea. (People v. Arbuckle (1978) 22 Cal.3d 749)
- 2) Defendant has the right to withdraw his plea if the judge is not available. Defendant can waive this right on the record (Arbuckle waiver).

3. Motion for New Trial (PC 1181)

a. Motion may be made orally or in writing depending on local policy.

b. Grounds for new trial:

- 1) Trial unlawfully held in defendant's absence
- 2) Jury received evidence out of court
- 3) Misconduct of the jury
- 4) Verdict reached by lot
- 5) Judicial error
- 6) Misconduct of counsel
- 7) New material evidence discovered
- 8) No available transcript of the proceedings due to unavailability of the court reporter

c. Any motion for new trial must be ruled on before a sentence can be imposed.

d. The court's reasons for granting or denying a motion for new trial must be stated for the record and appear in the minutes.

4. Probation Reports [PC 1203(b)]

a. Preparation

- 1) Court will refer case at time of conviction to a probation officer for investigation and preparation of a written report.
 - a) Probation officer will examine the circumstances surrounding the crime, defendant's prior history and record.
 - b) Written report will include probation officer's findings and recommendations to the court.
 - c) Conditions of probation will be included in the report if a grant of probation is recommended.
- 2) Report should be delivered to the court 5 days, or upon request, 9 days prior to the hearing.
 - a) Notify counsel the report has arrived.
 - b) Give original report and file to judge.

b. Confidentiality of Report (PC 1203.05)

- 1) Report is confidential **before** judgment is pronounced.
 - a) Report may be viewed by the court, clerk, defendant, defense counsel, prosecuting attorney, and probation officer without a court order.
 - b) Any requests to view the report prior to sentencing should be referred to the court. These are usually denied.
- 2) Any probation report filed with the court may be inspected and copied as follows:
 - a) Within 60 days from the date judgment is pronounced
 - b) At any time by order of the court
 - c) By any person authorized/required by law to inspect/receive copies
 - d) By the district attorney of the county at any time
 - e) By the subject of the report at any time.

- 3) Processing of report after hearing
 - a) File stamp original, signed report.
 - b) Follow local court procedures for filing:
 - i) Place report in a confidential envelope.
 - ii) Place confidential envelope in the case file.

c. Waivers

- 1) Defendant may waive preparation of a probation report.
- 2) Waiver is placed on the record.
- 3) Waiver should be included in the minutes.

5. Adult Pre-Sentence Diagnostic Evaluation (PC 1203.03)

a. Definition

- 1) An order to place an adult defendant in a diagnostic facility of the Department of Corrections for evaluation.
- 2) CDC will prepare a report reflecting a diagnosis and recommendation for the defendant's placement within 90 days.
- 3) Criminal proceedings are suspended pending the evaluation.
- 4) Defendant earns credit for time served pending the evaluation.

b. Sending the Defendant to CDC for Evaluation

- 1) The evaluation is ordered pursuant to PC 1203.03.
- 2) The custody status becomes or remains "Remanded without bail."
- 3) A hearing date for the defendant's return and sentencing is set 90 days in the future.
- 4) An Order for Placement, Delivery, and Return is prepared. Copies are made and certified.

- 5) A copy of the probation officer's report and a certified copy of the minute order are sent to the Sheriff to go with the defendant when transported.

c. Receiving the Defendant back from CDC

- 1) The original report is given to the sentencing judge.
- 2) Copies of the report are distributed to the District Attorney, Defense Attorney, and Probation Officer.
- 3) Verify the return of the defendant to local custody and notify jail of pending sentencing date.
- 4) Court will conduct sentencing hearing per normal procedures. (Remember to reinstate criminal proceedings)
- 5) After the sentencing hearing:
 - a) Collect diagnostic reports from the District Attorney and Probation Officer (PC 1203.03(b))
 - b) The Probation Officer is only allowed to retain the report if the defendant is granted probation. [PC 1203.03(c)]
 - c) File reports per local policy.

6. Pre-Sentence Diagnostic Evaluation – Evaluation and hearing for sex offenders (PC 288.1)

a. Definition

- 1) Evaluation is for a defendant convicted of any sex act with a child under the age of 14.
- 2) Sentence shall not be suspended until the court obtains a report on the defendant's mental condition from one of the following:
 - a) A reputable psychiatrist or reputable psychologist that meets the standards in PC 1027.
 - b) A recognized treatment program defined in PC 1000.12 or in PC 1203.066.

b. Criminal proceedings are not suspended pending this evaluation.

c. Sending the Defendant for Evaluation

- 1) Sentencing should be continued (time will vary) to allow for an evaluation to be done.
- 2) The clerk shall prepare the Order for Evaluation or a referral to a doctor.
- 3) If available, include in referral packet for mental health or doctor:
 - a) Copy of order or minute order
 - b) Copy of probation officer's report
- d. The report shall consider:
 - 1) If granting the defendant probation would be in the best interest of the child victim.
 - 2) If rehabilitation of the defendant is feasible.
 - 3) If returning the defendant to the family home would be in the best interest of the child victim.
- e. Sentencing
 - 1) Sentencing will proceed as usual.
 - 2) The PC 288.1 report should be treated as confidential and sealed accordingly.
 - 3) If the defendant is sentenced to state prison, the clerk should include a copy of the PC 288.1 report in the prison packet.

7. Pre-Sentence Diagnostic Evaluation - Sex Acts with Victim
(PC 1203.067, PC 288.1))

a. Definition

- 1) Evaluation is for a defendant convicted of any of the following sex crimes:
 - a) PC 261 - Rape
 - b) PC 262 - Spousal Rape
 - c) PC 264.1 - Rape/Penetration by Foreign Object
 - d) PC 286 - Sodomy

- e) PC 288 - Lewd and lascivious acts on a child
 - f) PC 288a - Oral Copulation
 - g) PC 289 - Penetration by Foreign Object
- 2) Probation may not be granted unless the court has done all of the following:
- a) Ordered a PC 1203.03 evaluation or similar evaluation by the probation department;
 - b) Conducted a hearing at time of sentencing to determine if probation would pose a threat to the victim.
 - i) The prosecuting attorney shall notice the victim.
 - ii) The victim shall be given an opportunity to address the court.
 - c) Order any psychiatric or psychological report ordered under PC 288.1 to include several factors in its report:
 - i) Will the defendant will be a threat to the victim
 - ii) The defendant's potential for a positive response to treatment.
- 3) Criminal proceedings are **not** suspended pending this evaluation.

b. Sending the Defendant for Evaluation

- 1) The probation report will contain a recommendation that the defendant be evaluated pursuant to PC 1203.067
- 2) Sentencing should be continued (time will vary) to allow for an evaluation to be done.
- 3) The clerk shall prepare the Order for Evaluation or a referral to a doctor.
- 4) Include in referral packet for mental health or doctor:
 - a) Copy of order or minute order
 - b) Copy of probation officer's report

c. Sentencing

- 1) Sentencing will proceed as usual.
- 2) The PC 1203.067 report shall be treated as confidential and sealed accordingly.
- 3) If sentenced to state prison, the clerk should include a copy of the report in the prison packet.
- 4) Defendant placed on probation shall be placed in an appropriate treatment program designed to deal with child molesters or sexual offenders, if available in the county.
- 5) Defendant ordered placed in a treatment program shall be responsible for paying the expense of the treatment program.
 - a) Court shall take into consideration the defendant's ability to pay.
 - b) No defendant shall be denied probation because of the inability to pay.

8. Minor Pre-Sentence Diagnostic Evaluation (WI 707.2)

a. Definition

- 1) An order for an evaluation and report concerning amenability to training and treatment offered by the California Youth Authority (CYA).
- 2) The order for an evaluation is mandatory for all juvenile defendants who were under the age of 16 when the crime was committed and optional for defendants who were age 16 or 17. (Minor tried as an adult.)
- 3) CYA will prepare a report reflecting a diagnosis and recommendation for the defendant's placement within 90 days.

4) *Criminal proceedings are suspended pending the evaluation?*

b. Sending the defendant to CYA for evaluation:

- 1) The evaluation is ordered pursuant to WI 707.2.
- 2) The custody status becomes or remains "Remanded without bail."

- 3) A hearing date for the defendant's return and sentencing is set on a date not to exceed 90 days in the future.

c. Prepare a CYA Commitment packet

- 1) CYA Commitment is prepared according to local policy.
- 2) Send three certified copies of the
 - a) Minute order
 - b) Charging document
 - c) Change of plea form OR minutes reflecting finding of guilt
 - d) Order for placement, if required.
- 3) The entire packet is sent to CYA in Sacramento.

d. Transferring Defendant To CYA

- 1) CYA will review information provided in packet and either accept or reject the defendant (juvenile stays in local custody pending their decision.)
- 2) Accept - CYA will send a letter to the court acknowledging acceptance of the minor.
 - a) The letter is file stamped and placed in the case file.
 - b) Certified copies are forwarded to the Sheriff to notify that agency to transport the defendant.
- 3) Reject - CYA will send a letter informing the court that the defendant is not amenable for their department.
 - a) The letter is file stamped and placed in the case file.
 - b) The case will be put on calendar before the sentencing judge for sentencing.
 - i) Clerk must notify parties of the new hearing date.

- ii) Clerk must notify the sheriff to transport the defendant on the new date.

e. Receipt Of The Report From CYA

- 1) The original report is given to the sentencing judge.
- 2) Copies of the report are distributed to the District Attorney, Defense Attorney, and Probation Officer.
- 3) Verify the return of the defendant to local custody and notify jail of sentencing date (if different.)

f. Court Will Conduct Sentencing Hearing

g. After The Sentencing Hearing

- 1) Collect reports from the District Attorney and Probation Officer.
- 2) File reports per local policy.
- 3) Reports are confidential.

DOCUMENTS NEEDED FOR YOUTH AUTHORITY

COMMITMENTS AND REFERRALS

When a commitment or diagnostic study has been ordered for a minor defendant, send the following documents in a referral package to the agency responsible for processing these cases:

1. Referral Document - CYA Referral form 1.411
2. Court Orders - Three (3) copies of the minute order, Information, and findings for adult court referrals for diagnostic reports. [WI 707.2]

 Four (4) copies of the minute order and abstract of judgment for cases sentenced to CDC pursuant to WI 1731.5(c).
3. Three (3) copies of the probation report, including the face sheet and full social history sufficient to insure complete understanding of the subject=s background.

 Three (3) copies of prior probation reports if the most recent reports do not supply adequate social history.

 Three (3) copies of the fitness report for diagnostic studies per WI 707.2.
4. Psychological and Medical Reports - Two (2) copies of all psychiatric, psychological and medical reports.
5. Arrest Report - One (1) copy of the arrest report.

C. SENTENCING EVENTS

1. Arraignment for Judgment (PC 1200)

- a. May be waived, minutes must reflect waiver.
- b. Defendant waives formal arraignment or is arraigned by the Court (or clerk or D.A.).
- c. Defendant is advised:
 - 1) Of the nature of the charge(s)
 - 2) His/her plea or the verdict
- d. Defendant must be asked if there is any reason why judgment should not be pronounced.

2. “No Legal Cause ...” (PC 1201)

- a. No new grounds for a motion for new trial or arrest of judgment have been discovered.
- b. No question of sanity/competency of the defendant exists.

3. Statement of Victim/Next of Kin (PC 679.02(a)(3), PC 1191.1)

- a. Victim (or next of kin if the victim is deceased) must be notified in writing of the sentencing date by the probation officer.
- b. If victim does not appear, the record should reflect the victim had knowledge of the hearing and declined to attend.
- c. Statements by the victim may be made orally, written or by video.
- d. Victim does not need to be sworn to make a statement.

4. Dismissal of Remaining Charges by the Prosecuting Attorney (PC 1192.6)

- a. Any case in which felony charges have been amended or dismissed must have the reasons for the amendment or dismissal placed on the record.
- b. Any case in which the prosecuting attorney wishes to dismiss a charge in the complaint, information, or indictment must state specific reasons for the dismissal in open court on the record.
- c. The prosecuting attorney, in any case in which the defendant pled guilty or nolo contendere to a felony charge, will recommend what punishment should be imposed.

5. Pronouncement of Judgment

- a. Court will determine the degree of a crime if not already done at time of conviction. (PC 1192) The offense will be deemed to be the lesser degree if not determined at this time.
- b. State that he/she has read and considered all submitted reports and statements.
- c. Make specific findings on all relevant issues.
- d. Rule on any motions made that have not yet been ruled on.
- e. Review question of probation; grant or deny, stating reasons for same.
- f. Review terms and conditions, if probation granted.
- g. Impose monetary punishments, including restitution if amounts are known at this time.
- h. Note terms of sentence imposed, accounting for every count; identifying the principal and subordinate terms and sentence relationships.

6. Advisements

- a. Advise defendant of appeal rights if necessary.
- b. Advise defendant of deportation if convicted of a felony. [PC 1016.5(a)]
- c. Advise defendant about parole.

7. Reasons for Sentence

- a. Court must state reasons for selecting sentence on the record.
- b. Court must make a finding that unusual circumstances exist if probation is granted when a defendant is statutorily ineligible. Record in the minutes the circumstances indicated by the court. [PC 1203 (f)]

8. Miscellaneous Matters

- a. Exonerate any bond posted.
- b. Make orders as to custody status.
- c. Set bail pending appeal, if requested.
- d. Note credit for time already served (PC 4019). Commitment must be for 6 days to earn good time/work time credits. [PC 4019(4)(e)(f)]
- e. Set hearing to determine amount of restitution if requested or reserve the issue of restitution at a future date.

D. PROBATION

1. Definition

- a. A sentencing alternative for low risk offenders.
- b. Consists of a conditional and revocable release into the community.
- c. May includes fines, a period of time in local custody, and other terms and conditions.
- d. A defendant that successfully completes probation will avoid going to jail/prison.

2. Types of Probation

- a. Formal - under the supervision of a probation officer
- b. Informal - unsupervised; may be referred to as “probation to the court” or “conditional sentence.”[PC 1203(a)]

3. Imposition of Sentence Suspended (“ISS”)

- a. No sentence is imposed.
- b. Defendant may be placed on formal or informal probation.
- c. Defendant must agree to the terms and conditions of probation.
- d. A violation of probation may result in a variety of possible actions including, but not limited to, probation being revoked and reinstated with new terms or conditions of probation; revoked and terminated (no other punishment will be imposed on this case but may be on the new case); or revoked and a jail/state prison sentence imposed.

4. Execution of Sentence Suspended (“ESS”)

- a. Defendant is sentenced to serve time in state prison.
- b. Enforcement of the prison sentence is delayed and the defendant is placed on probation (most often formal) with various terms and conditions.
- c. A violation of probation will most likely result in probation being revoked and the defendant sent to prison for the time previously imposed.

5. Terms and Conditions

- a. Exact terms and conditions of probation will vary based on type of case, criminality of the defendant, and programs available to the court.
- b. Defendant will be ordered to perform certain tasks, successfully complete training/education programs and pay monetary fines or fees.
- c. For formal probation, defendant will be ordered to report to the Probation Department. Immediately after sentence or within set time period after release from custody.

6. Probation Violations (PC 1203.2)

- a. Probation officer brings probationer before the court if the officer has probable cause to believe probationer has violated probation.
- b. Defendant may be arrested by Probation and brought into court.
- c. Petition may be prepared by probation officer.
 - 1) Defines charges and the sentence previously imposed.
 - 2) Specifies condition of probation allegedly violated and how it was violated.
 - 3) A report is attached summarizing the court status, facts of the original offense, reason for a hearing, an evaluation and recommendation.
 - 4) Petition may request a bench warrant be issued or an Order to Show Cause be issued with a date for the defendant to appear in court.
- d. When a probationer is arraigned on a new charge, (s)he must be given notice by the probation officer or district attorney of any alleged violation of probation.
 - 1) Notice of the violation of probation may be given to the probationer at first court appearance in the proceeding.
 - 2) Prosecuting attorney shall be given two day written notice and an opportunity to be heard on the matter. (PC 1203.3(b)(1))
 - 3) Defendant must admit or deny the violation.
 - a) Admitted - sentencing after revocation hearing is set.
 - b) Denied - evidentiary hearing is set.

- e. Probation Hearing (Evidentiary Hearing)
 - 1) Hearing is to prove/disprove the violation.
 - 2) Testimony and exhibits may be offered.
 - 3) Hearing may be held in conjunction with proceedings in a new case.
 - 4) Willful violation not proved - probation is reinstated with same terms and conditions.
 - 5) Willful violation proved - probation revoked and sentencing after revocation is set.
- f. Sentencing After Revocation
 - 1) Court may reinstate probation on existing terms and conditions.
 - 2) Court may reinstate probation with new terms and conditions.
 - 3) Court may revoke and terminate probation, then sentence defendant to jail/state prison.
 - 4) Court may revoke and terminate probation, then order the previous prison sentence imposed to commence forthwith.
 - 5) A prison sentence previously imposed and suspended must be vacated if the court chooses to impose a different sentence.

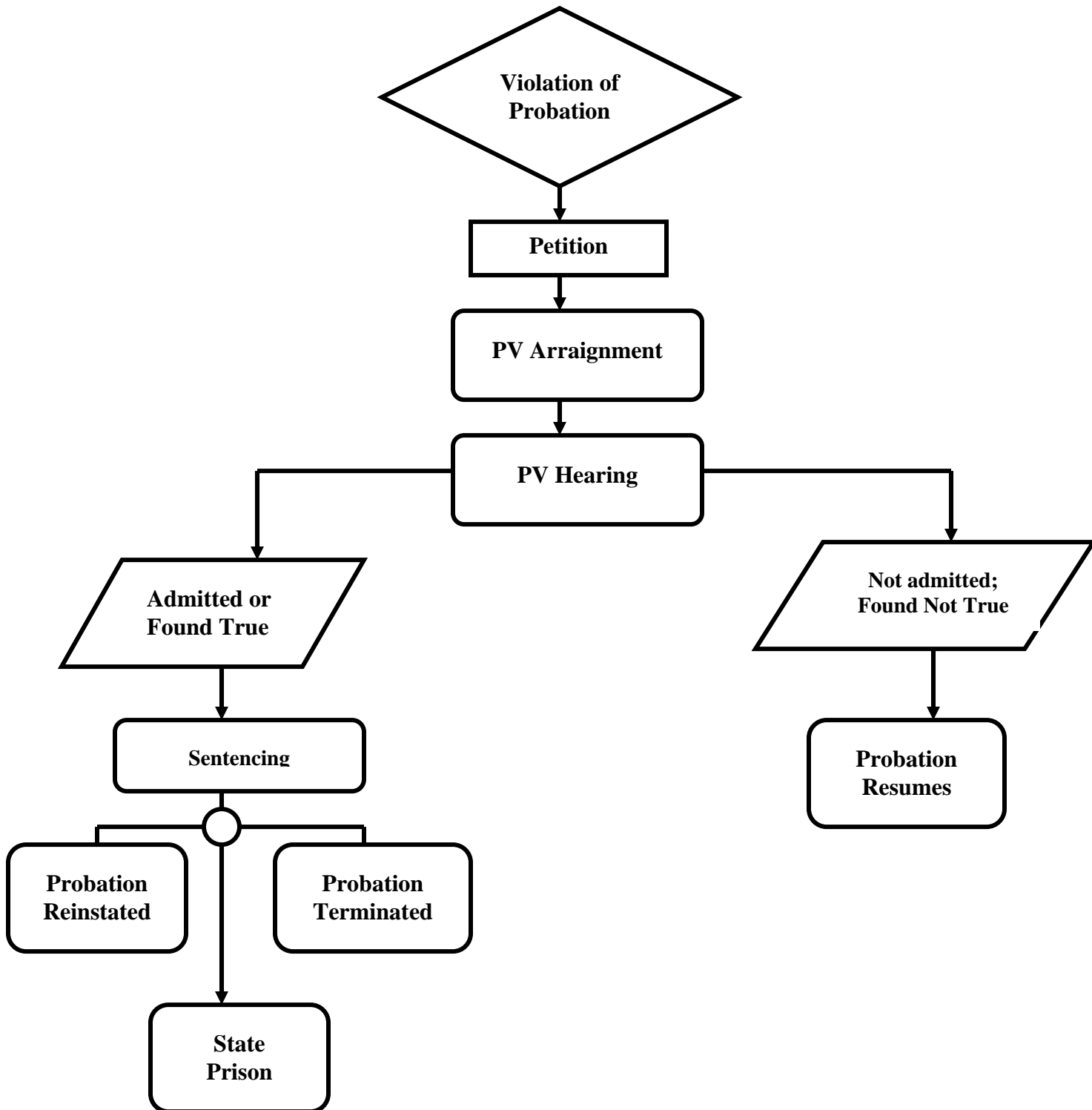
7. Probation Modification

- a. May be requested when a previously imposed condition of probation needs to be augmented, changed or deleted.
- b. Request may be made by probationer, his counsel, the probation officer, or any other interested party.
- c. Request may be made in writing or set on court's calendar per local policy.
- d. Prosecuting attorney has the right to a hearing in open court before any term of probation is modified.

8. Other Probation Related Hearings

- a. Review - set for the defendant to report on his probation progress.
- b. Proof of Compliance - set for the defendant to submit proof of compliance with some term of probation.
- c. PC 1203.2a - defendant is imprisoned for a subsequent offense and requests in writing to be sentenced in absentia for the offense on which probation was granted.
 - 1) Request is made in writing personally or through counsel.
 - 2) Request is signed in presence of the warden where confined.
 - 3) Within 30 days after notification, probation officer must notify the court.
 - 4) Defendant's request is filed; hearing is held without the presence of the defendant.
 - 5) Court will find the defendant in violation of probation, terminate probation, and sentence the defendant.
 - 6) Sentence is usually concurrent to any other time being served.

9. Probation Violation Overview



E. STATE PRISON SENTENCING

1. Definition

- a. Defendant is committed to the state prison for a time specified by law.
- b. There are two types of prison sentences - determinate and indeterminate.
- c. Time imposed - the number of years/months imposed on each convicted count and enhancement.
- d. Total fixed term - the sum of the consecutive terms imposed.

2. Determinate Sentence

- a. Defendant is committed to state prison for a fixed period of time.
- b. Each felony offense has a specific range (low, middle, upper) and length of punishment set forth in the affected statute.
- c. Court must select the middle term unless it finds circumstances in mitigation or aggravation.
 - 1) Mitigation - facts which justify the imposition of the lower of three authorized prison terms or facts which justify the court in declining to impose an enhancement when the court has discretion not to impose it. [CRC 4.405(e)]
 - 2) Aggravation - facts which justify the imposition of the upper prison term. [CRC 4.405(d)]
 - 3) Court must state its reasons for selecting a term other than the middle term. [CRC 4.406(b)(4)]

3. Indeterminate Sentence

- a. Defendant is committed to state prison for an indefinite period of time (up to life.)
- b. Certain crimes still authorize an indeterminate sentence (murder, aggravated kidnapping, etc.)
- c. Sample indeterminate sentences:
 - 1) 15/20/25 years to life
 - 2) Life with or without the possibility of parole
- d. A defendant sentenced to both a determinate and indeterminate sentence in state prison will serve all determinate time first, then the indeterminate time. (PC 669)

4. Counts

- a. The individual charge(s) the defendant was found guilty, either by plea, verdict or court finding.
- b. A sentence must be imposed, stayed, or stricken on each convicted count.

5. Enhancements (Allegations)

- a. Allegation(s) found true that will add (enhance) the time imposed on each convicted count (i.e. use of a firearm in the commission of the crime, causing great bodily injury, the age of the victim, possessing a specific quantity of a controlled substance.)
- b. Special circumstances proved true will warrant the death penalty or life imprisonment without the possibility of parole.
- c. Account for all alleged enhancements.

6. Priors

- a. Allegations found true that are tied to the defendant based on the defendant's prior criminal history. These allegations may include prior prison sentences.
- b. See **Section II - Accusatory Pleadings and Their Components** for further descriptions of the types of priors.
- c. A sentence must be imposed on priors found true; statutes preclude the court from staying or striking sentences on certain priors (exceptions – PC 1385.)

- d. Account for all alleged prior conviction allegations.

7. Multiple Counts (PC 1170.1)

- a. Principal term - the count with the greatest term of imprisonment imposed including any term imposed for applicable enhancements.
- b. Subordinate term - any remaining convicted counts and their enhancements.
- c. Court must determine the sentence relationship between the principal term and all subordinate terms.

8. Concurrent Term

- a. A sentence to be served at the same time as a principal term.
- b. All concurrent sentences must have a full (low, middle or upper) term imposed.
- c. Prison terms not designated as consecutive or concurrent shall be deemed concurrent. (PC 669)

9. Consecutive Term

- a. A sentence to be served immediately following the first sentence.
- b. Consecutive sentences may be full term as designated by statute (certain sex crimes, for example.)
- c. Other consecutive sentences will usually be one-third the middle term for each subordinate count, including enhancements. (PC 1170.1(a))

10. Multiple Cases

- a. The court must designate a sentence relationship between convictions in different proceedings (whether they are from the same court or not.)
- b. The same rules for designating sentence relationships between multiple counts apply to multiple cases.

11. Stayed/Stricken

- a. Stays - The court will impose a sentence for a particular crime and then suspend that sentence in certain instances. The minutes must clearly reflect every count or enhancement which has been stayed and under what authority. (PC 654, PC 1170.1(g), PC 1170.1(a))
- b. Stricken - Punishment may not be imposed on certain enhancements if the court determines that there are circumstances in mitigation of the additional punishment. (PC 1385)

12. Other Prison Commitments

a. Recall of sentence under PC 1170(d)

- 1) Defendant is sentenced to prison.
- 2) Court will request a diagnostic evaluation.
- 3) Court retains jurisdiction for 120 days to recall the commitment and re-sentence the defendant based on information in a written evaluation report prepared by CDC.
- 4) An amended state prison abstract must be prepared to reflect the new sentence.

b. CYA Commitment (WI 1731.5(a))

- 1) A specific prison term is not imposed and defendant is committed to the California Youth Authority for the indeterminate term "prescribed by law."
- 2) CYA will determine the length of time defendant will remain under their jurisdiction.

c. Sentenced to prison, housed at CYA (WI 1731.5(c))

- 1) Defendant must be **under the age of 18 when sentence pronounced**.
- 2) A prison sentence is imposed.
- 3) The prison term cannot exceed the defendant's 18th birthday unless it will be completed by their 21st birthday.
- 4) Court will *recommend* that defendant be housed at CYA pursuant to WI 1731.5(c) if accepted.
- 5) If defendant is not accepted for housing, they shall return to court for re-sentencing.
- 6) Defendant, if accepted, will be housed at CYA until any of the following occur: (WI 1731.5(c)(1))
 - a) The Director CYA orders the defendant transferred to the Department of Corrections to complete the remainder of the sentence.
 - b) The defendant is discharged by the Board of Prison Terms.
 - c) The defendant reaches the age of 18 unless the period of incarceration would be completed on or before the 21st birthday.

d. Committed to CYA subject to recall under WI 1737

- 1) Defendant is committed to CYA.
- 2) Court will request a diagnostic evaluation.
- 3) Court retains jurisdiction for 120 days to recall the commitment and re-sentence the defendant based on information in a written evaluation report prepared by CYA.

13. Documents Needed for “Prison Packet” [PC 1203.01]

- a. Once defendants have been sentenced to state prison, they are usually taken into custody and remanded to the custody of the Sheriff for transportation to a Department of Corrections Reception Center assigned to your county.
- b. Certain court documents must be prepared to advise the Sheriff of the defendant’s sentence and facilitate the sheriff’s execution of that order. These documents also advise the Department of Corrections of the court’s sentence for this particular defendant. Collectively, these documents are usually known as the “prison packet” and may include the following:
 - 1) copy of state prison abstract (with original signature and court seal)
 - 2) certified copy of charging document (complaint, information, indictment), including any amendments
 - 3) certified copy of sentencing minute order with copy of Fingerprint Card attached (PC 992)
 - 4) copy of probation reports (pre-sentence, prison follow up, etc.)
 - 5) statements in aggravation or mitigation, medical reports, etc.
 - 6) copy of sentencing transcript, if prepared
 - 7) copy of “change or plea” transcript
 - 8) certified copy of child visitation order, sealed
 - 9) certified copies of other documents as needed

The prison packet will be delivered by following local procedures to the Sheriff. The Sheriff’s Office will deliver the prison packet and the defendant to the Department of Corrections on the next available transportation bus.

F. FINES/PENALTY ASSESSMENTS (PC 1205)

1. Imposition of Fines

- a. Court may impose a fine in lieu of imprisonment and a penalty assessment on the fine.
- b. Fine is to be paid:
 - 1) In full by the date specified by the court, or
 - 2) In installment payments on dates specified by the court (an additional fee may be charged for processing installment payments) or
 - 3) In full forthwith if no dates are specified when the fine is to be paid.

2. Penalty Assessments

- a. PC 1464 - A penalty of \$10 for every \$10 of all fines, penalties, or forfeitures shall be imposed. This money goes to the state.
- b. GC 76000 - A penalty of \$7.00 for every \$10 of all fines, penalties, or forfeitures shall be imposed. This money goes to the county.
- c. GC 70372, GC 70375(b)(1) – Courthouse construction penalty: maximum \$5 for every \$10 of all fines penalties, or forfeitures shall be imposed. This money goes to the court; amount varies by county.
- d. GC 76104.6 –A penalty of \$1 for every \$10 of all fines, penalties, or forfeitures shall be imposed. This money goes to the DNA Identification Fund.
- e. Assessment will be based on the total fine for all offenses in the event of multiple offenses.
- f. When a fine is suspended, assessment shall be reduced in proportion to the suspension.
- g. *People vs. Martinez, Ventura* ((1998) 65 Cal. App 4th 1511; 77 Cal Rptr 2d 492) states that penalty assessments should be assessed on **all** fees and fines except as provided by statute (for example, restitution fines and restitution orders as provided in PC 1202.4(e) or WI 730.6(f)).

3. Failure to Pay Fine (PC 1205)

- a. Defendant is to be committed to custody until fine is satisfied.
- b. Imprisonment must not exceed one day for each \$30 of unpaid fine.
- c. Imprisonment may not extend beyond the term for which defendant could be sentenced to jail/prison for the offense.

G. JAIL

1. Local County Jail

- a. Probation is denied and defendant is sentenced to county jail for a fixed period of time.
- b. Time to be served must not exceed one year for each offense committed. (PC 19.2)

2. Sentence Deemed a Misdemeanor

- a. Imposition of sentence in this manner constitutes a misdemeanor conviction. (PC 17)
- b. An order imposing a sentence of jail time has the effect of making the offense a misdemeanor.
- c. An order imposing a period of time in the jail as a condition of probation does not represent completion of the sentence.

H. RESTITUTION FINES

1. Definitions

- a. A mandatory monetary penalty imposed by the state on conviction of a misdemeanor/felony offense [PC 1202.4(b)].
- b. Fines collected are used to support the Victims of Crime Program.
- c. Amount of fine is set at the discretion of the court and is to be commensurate with the seriousness of the crime.
 - 1) Adults - minimum of \$200 and maximum of \$10,000 (PC 1202.4)
 - 2) Minors - minimum of \$100 and maximum of \$1,000 (WI 730.6)
- d. Penalty assessments cannot be added to the amount of a restitution fine.

2. Probation Revocation Restitution Fine (PC 1202.44)

- a. The Court shall assess an additional probation revocation restitution fine in the same amount as that imposed pursuant to PC 1202.4(b).
- b. Fine is suspended pending successful completion of probation.
- c. Fine shall become effective upon the revocation of probation.

3. Parole Revocation Restitution Fine (PC 1202.45)

- a. All persons sentenced to state prison may be assessed an additional restitution fine equal to the amount assessed per PC 1202.4(b).
- b. Fine is suspended pending successful completion of parole.
- c. Fine shall become effective if parole is violated.

4. Fine is a Lifetime Order (PC 1214)

- a. Fine can be paid several years after imposition of sentence.
- b. Fine is not subject to penalty assessments under PC 1464.

I. RESTITUTION (PC 1202.4(F))

1. Definitions

- a. Defendant may be ordered to reimburse the victim for any losses suffered as a result of the crime.
- b. Amount of restitution will be an amount determined by the prosecuting attorney with the assistance of the victim or a Victim/Witness Program or the Probation Department.
 - 1) Some losses may not be known at time of sentencing (i.e., ongoing medical treatment).
 - a) Court can order restitution in “an amount to be determined.”
 - b) This reserves jurisdiction of the issue of restitution and places the defendant on notice that restitution will be ordered.
 - 2) A future hearing date should be set to determine the amount.

- a) Hearing will set amount of restitution to be paid.
- b) Hearing may also settle any part of the restitution order disputed by the defendant.
- c. Penalty assessments cannot be added to a restitution order.

2. Information that should be Identified in Restitution Order

- a. Each victim to be paid.
- b. The amount of restitution to be paid to each victim.
- c. The date of loss (either the date of the crime or the date the restitution order is made).
- d. A provision for collection of interest at the legal rate (10% per annum) from the date of the loss to the date paid in full.

3. Collection of Restitution

- a. Restitution may be collected as a civil judgment (PC 1214)
- b. Victim may claim attorney's fees and costs accrued in the collection process.
- c. Restitution order has an infinite life (no expiration date.)
- d. Restitution will be paid to the victim if the victim has not received assistance thru the Restitution Fund.
- e. Restitution will be paid to the Restitution Fund if the victim has received assistance thru the Fund.

4. Defendant's Financial Disclosure (PC 1202.4(f)(4))

- a. Defendant must prepare a financial disclosure that identifies assets, income & liabilities the defendant held or controlled at present or future interest in as of the date of the defendant's arrest for the crime for which restitution may be ordered.
- b. Disclosure shall be signed by the defendant on the approved Judicial Council form. [CR-115]
- c. Disclosure shall be available to the victim.

- d. Disclosure is not required if the defendant has completed a financial statement pursuant to PC 987.
 - 1) Confidentiality of the PC 987 statement shall be deemed waived.
 - 2) Financial affidavit shall serve in lieu of the financial disclosure required under PC 1202.4(f)(4).
- e. Financial disclosure required under PC 1202.4(f)(4) is to be filed with the clerk no later than the date set for sentencing unless otherwise directed by the court.
- f. Inspection and copying of the disclosure may be done as provided by PC 1203.05(b), (c), or (d).
- g. If 120 days prior to the expiration of probation, the defendant has an unpaid balance on restitution order or fine, he/she is required to fill out revised Defendant Statement of Assets form (CR-115). Form must be filed with the court at least 90 days prior to the scheduled release from probation. [PC1202.4(f)(11)]

J. CRIMINAL DOMESTIC VIOLENCE/PROTECTIVE ORDERS

1. Definition

- a. Abuse - Intentional or reckless causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.
- b. Domestic Violence - Abuse committed against an adult or fully emancipated minor. Relationship to abuser must be one of the following:
 - 1) Spouse
 - 2) Former spouse
 - 3) Co-habitant - two unrelated adults living together for a substantial period of time, resulting in some permanency of relationship. Factors include:
 - a) sexual relations
 - b) sharing income or expenses
 - c) joint use or ownership of property

- d) whether the parties themselves act as husband and wife
- e) continuity of the relationship
- f) length of the relationship
- 4) Former Co-habitant
- 5) Person with whom suspect has had a child
- 6) Person with whom suspect is having or has had a dating or engagement relationship

2. Qualifying Criteria for a Protective Order

- a. Upon good cause belief that harm to, or intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue a protective order.
- b. In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700 of the Penal Code, the court shall consider issuing the protective order on its own motion.
- c. All interested parties shall receive a copy of the order.
- d. In those cases in which a complaint, information or indictment charging a crime of domestic violence has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence over any other outstanding court order against the defendant.

3. Marking the Court File

In order to facilitate the issuance of these orders, the court's records of all criminal cases involving domestic violence *shall* be marked to clearly alert the court to this issue. [PC 136.2(h)(1)]

4. The Protective Order

- a. In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above described orders on its own motion. All interested parties shall receive a copy of those orders. [PC 136.2(h)(1)] (see CR-160)
- b. The Order should be completed by the clerk and distributed as follows:
 - 1) Original to court file
 - 2) One copy to each protected person

- 3) One copy to the defendant
 - 4) One copy to the prosecutor
 - 5) One copy to law enforcement to be entered into CLETS within one (1) business day pursuant to FC 6380(a) (PC 136.2(g))
- c. The Protective Order is in effect for three years from the date of issuance or until the date indicated in Section 6 of the Order.
- d. Proof of Service
- 1) If possible, the defendant may be served in open court and no additional proof of service is required.
 - 2) If defendant is not present in open court or it is not possible to serve him/her at that time, the clerk should mail a copy of the protective order to the defendant.
 - 3) The name and address of the protected person(s) may be obtained from the prosecutor if not available in the court's file.

5. Modification of the Protective Order

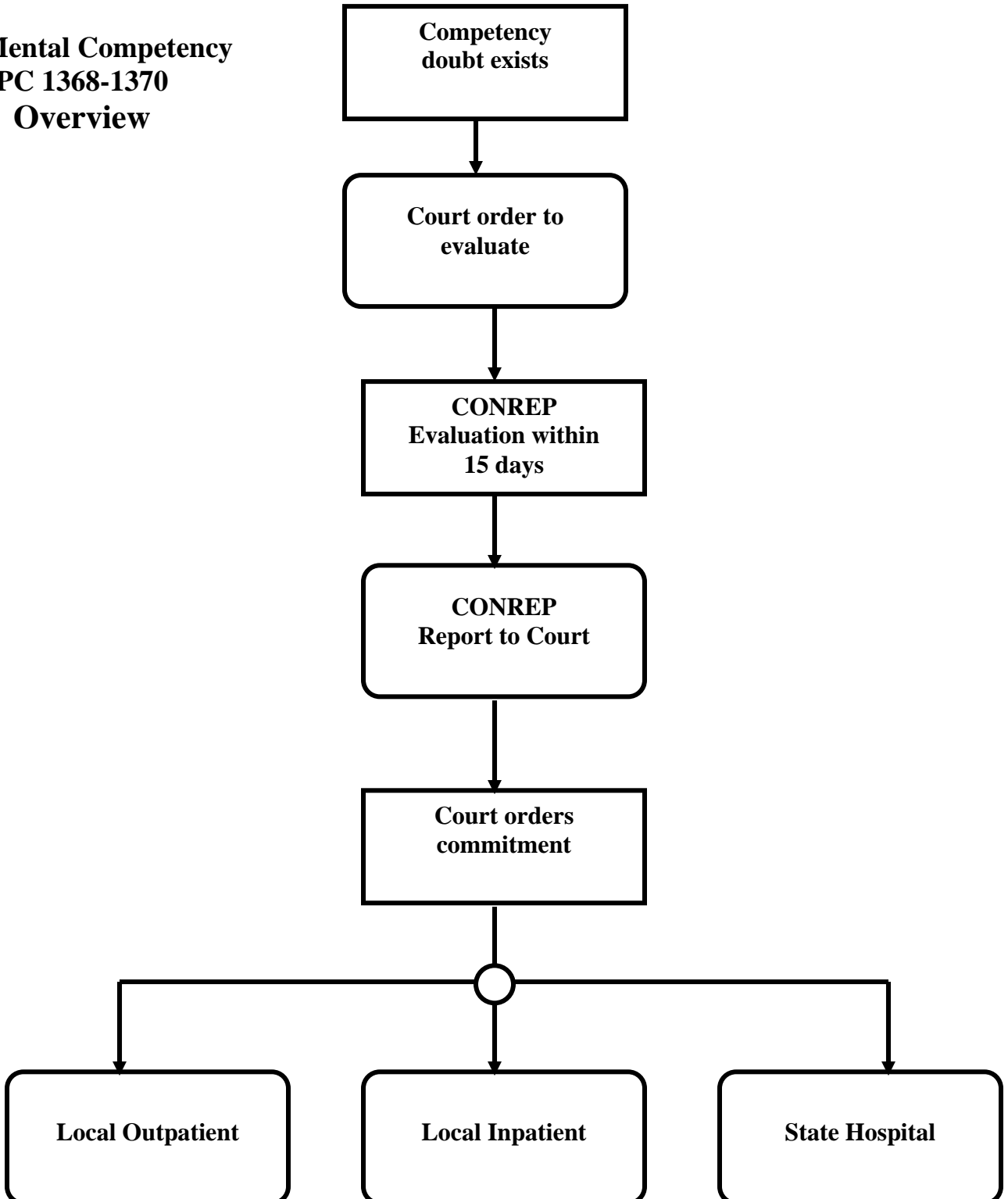
- a. In the event the defendant or victim appears in court requesting that the order be modified, and that request is granted, the clerk shall complete an additional Protective Order checking the box which indicates "Modification".
- b. PC 1203.097 contains terms and conditions of probation for domestic violence offenses.

6. Termination of the Protective Order

- a. When the Court terminates the Protective Order, the clerk shall complete Order terminating protective order. (CR-165)

VI. CRIMINAL mental competence proceedings

**A. Mental Competency
PC 1368-1370
Overview**



B. MENTAL INCOMPETENCE (PC 1367, 1368)

“A person cannot be tried or adjudged to punishment while that person is mentally incompetent. A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (PC 1367(a))

1. Who May Make the Motion

- a. Defense counsel must make a motion pursuant to this section when a doubt arises as to the current mental competency of a defendant.
- b. The court, on its own motion, may express a doubt as to the defendant’s competency.

2. When Motion May be Made

- a. Section 1368.1 PC does allow defense counsel to make motions per PC 995, PC 1538.5 and demurrers while competency issue is pending.
- b. Competency issues may be done at any time during criminal proceedings.
- c. If proceedings are suspended, any pending hearing or trial dates are to be vacated.

3. Medical Evaluation of Defendant

- a. Appointment of Doctor
 - 1) A psychiatrist or psychologist is appointed by the court to evaluate defendant’s mental competency and:
 - a. Whether treatment with antipsychotic medication is medically appropriate and likely to restore defendant to mental competence.
 - b. Whether the defendant has the capacity to make decisions regarding antipsychotic medication.
 - c. Whether defendant is a danger to self or others.
 - 2) Matter is continued for a period of time to allow the doctor to examine the defendant; the doctor is notified by the clerk.

- 3) If proceedings were suspended on the court's motion, two doctors are appointed.

- b. Doctor(s) report is considered by the court and counsel.

4. Defendant is Found Competent

- a. Counsel submits on the report(s).
- b. Court finds the defendant competent.
- c. Criminal proceedings are reinstated.
- d. If case was originally certified from the preliminary level, it is remanded to be re-set for further proceedings.
- e. If proceedings were suspended in superior court, the readiness, trial or other hearings are re-set.

5. Defendant is Found Incompetent

- a. Counsel submits on the report(s).
- b. Court finds the defendant is not competent.
- c. Matter is referred to the local Dept. of Mental Health (Forensic Services) for an evaluation on placement pursuant to PC 1370.
- d. Mental Health has 15 judicial days to submit a recommendation on placement to the court.

“Prior to making the order directing that the defendant be confined in a treatment facility or placed on outpatient status, the court shall order the county mental health director or his or her designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility. No person shall be admitted to a treatment facility or placed on outpatient status under this section without having been evaluated by the county mental health director or his or her designee.” (PC 1370(a)(2))

6. Order for Evaluation for Mental Health

- a. Prepare a mental health packet for the defendant.
- b. Documents should include [PC 1370(f)(3)(A-H)]:
 - 1) Order for Evaluation (certified copy)
 - 2) Copy of last minute order (certified copy)
 - 3) Copy of arrest report(s)
 - 4) Copy of Rap Sheet
 - 5) Copy of doctor's report
 - 6) Copies of any other psychiatric reports in file

7. Defense Request for Jury Trial

- a. Defense counsel will not stipulate to the finding of the court appointed doctor and requests a jury trial.
- b. Jury trial is conducted in the same manner as a criminal jury trial.
- c. Burden of proving that the defendant is **not** competent falls on the defense. The jury's finding is based on a preponderance of the evidence.
- d. Jury's verdict must be unanimous. (PC 1369(f))
- e. After trial, the proceedings are essentially the same as if the matter had been submitted.
 - 1) Competent - criminal proceedings are reinstated
 - 2) Incompetent - referred to Department of Mental Health

8. Mental Incompetence on Sex Crimes (PC 1370(a)(1)(B)(ii))

- a. Prosecutor shall determine if:
 - 1) Defendant was previously found incompetent on a charge listed in PC 290
 - 2) Defendant is currently the subject of pending PC 1368 proceedings on a charge listed in PC 290.
- b. Prosecutor shall notify the court and defendant in writing.
- c. Court shall order the defendant to be delivered to a state hospital or other secure facility.
 - 1) Defendant will be placed for care and treatment of mental disorders.
 - 2) Placement will be until the court makes specific findings on the record that alternate placement would provide more appropriate treatment and not pose a danger to the health and safety of others.

9. Mental Incompetence on Sex Crimes/No Bail (PC 1370(a)(1)(B)(iii))

- a. Defendant was previously denied bail as the court found defendant's release would result in great bodily harm to others.
- b. Court shall order defendant delivered to a state hospital or other secure facility.
 - 1) Defendant will be placed for care and treatment of mental disorders.
 - 2) Placement will be until court makes a specific finding on the record that alternate placement would provide more appropriate treatment and not pose a danger to the health and safety of others.
- c. Clerk is to notify the Department of Justice in writing of any finding of mental incompetence on a defendant subject to PC 290.

10. Placement (PC 1370(a)(2))

- a. A recommendation for placement must be accompanied by justification for such placement including needs for secure environment, intensity and duration of treatment, location of facility and availability of resources.
- b. Alternatives available for placement:
 - 1) State Hospital (such as Patton State Hospital)
 - 2) Local public or private treatment facilities
 - 3) Community out-patient treatment
- c. The court determines the most appropriate treatment facility and orders the defendant committed to same.

11. Commitment Order

- a. The court must state the maximum term of commitment. (PC 1370(a)(3)(B))
 - 1) No more than three (3) years on a felony charge.
 - 2) No longer than one (1) year or the maximum term of confinement time available on a misdemeanor.
- b. The court must also state the total number of actual days credit for time served to be applied to the commitment. No good/work time is given. (PC 1370(a)(3))
- c. Court includes an order for firearm restriction.
- d. The clerk will prepare the commitment packet for the state hospital which shall include: [PC 1370(f)(3)(A-H)]
 - 1) Certified copy of the Commitment to State hospital (PC 1370)
 - 2) Certified copy of committing minute order
 - 3) Arrest report
 - 4) All previous psychiatric reports
 - 5) Rap Sheet
 - 6) Mental Health Evaluation
 - 7) Records that defendant has a previous mental incompetence on a PC 290 offense.

- e. This packet will accompany defendants to state hospital.
- f. Exonerate bail, if defendant was out of custody on bail. (PC 1371)
- g. Order for commitment shall include an order directing the sheriff to redeliver the defendant to the court without further order of the court upon receiving a copy of the certificate of restoration of defendant's competence. (PC 1372(a)(2))

12. Progress Reports (PC 1370(b)(1))

- a. Submitted to the court within 90 days of commitment and every six months thereafter.
 - 1) Includes the person's progress toward recovery of mental competence, current treatment, goals, progress, medications, diagnosis and recommendations.
 - 2) The recommendation must be one of the following:
 - a) Retain and treat
 - b) Refer for outpatient treatment
 - c) Return to court as competent to stand trial
 - d) Return to court as there is no likelihood the person will regain mental competence in the foreseeable future.
- b. At the end of 18 months, a defendant who is still hospitalized or on outpatient status shall be returned to court for a hearing pursuant to the procedures set forth in PC 1369. (PC 1370(b)(2))
 - 1) The court should order the hospital to complete an updated and current progress report for the defendant's potential to recover mental competence.

- 2) After reviewing the current hospital report, the court will make a finding:
 - a) The defendant remains mentally incompetent. He/she will be returned to the state hospital for further treatment.
 - b) The defendant is now mentally competent to stand trial and criminal proceedings are reinstated.
 - c) The defendant remains mentally incompetent and appears to be gravely disabled.
 - i) The court will order the Conservator's Office to evaluate the defendant to determine if he/she is eligible for the appointment of a conservator. (WI 5350)
 - ii) The criminal case will be dismissed (or terminated).
- 3) At each review hearing the court shall determine if the security level of the housing and treatment facility is appropriate. (PC 1370(b)(4))

13. Certified of Competence (PC 1372(a)(1))

- a. Submitted by the hospital (or the director of the treatment facility) when it is determined that the defendant is mentally competent.
- b. Certificate will be sent to the committing court by certified mail, return receipt requested.
- c. Date of filing of the certificate shall be the date on the return receipt.
- d. Defendant must be removed from the hospital within 10 days of filing the Certificate in order to avoid the committing court from being charged for the continued housing of the defendant in the hospital [PC 1372(A)(2)].
- e. Counsel will either:
 - 1) Submit the finding of the hospital to the court for a finding that competency has been restored.
 - 2) Challenge the finding and move that an additional local doctor be appointed to determine present competency.
 - 3) Request a formal hearing when evidence is presented and witnesses are sworn.

- f. Upon completion of the hearing, (or upon stipulation of counsel) the court will find competency has been restored and reinstate criminal proceedings or find that competency is not restored and return the defendant to the hospital.

14. Maximum Term of Commitment [PC 1370(c)(1), 1370.01(c)(1)]

- a. At the end of three years from the date of commitment (felony).
- b. At the end of one year from the date of commitment or at the end of maximum term of incarceration for the most serious offense charged, whichever is shorter (misdemeanor).

C. DEVELOPMENTALLY DISABLED defendants (PC 1369)

“As used in this section, “developmental disability” means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.” (PC1370.1 (H))

“...If it is suspected that the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally disabled established under Division 4.5 (commencing with section 4500) of the Welfare and Institutions Code, or the designee of the director, to examine the defendant.” (PC 1369(a))

1. Who May Make the Motion

- a. Defense counsel must make a motion pursuant to this section when a doubt arises as to the current mental competency of a defendant and counsel has reason to believe that the defendant may be developmentally disabled.
- b. The court, on its own motion, may express a doubt as to the defendant’s competency.
 - 1) Criminal proceedings are suspended until a finding of competency is made.

- 2) Section PC 1368.1 does allow defense counsel to make motions per PC 995, PC 1538.5 and demurrers while competency issue is pending.
- 3) May be done at any time during criminal proceedings.
- 4) If proceedings are suspended in the preliminary level court, the matter is certified to superior court level for the appointment of a medical examiner and finding by the court.
- 5) If proceedings are suspended in superior court, any pending hearing or trial dates are to be vacated.

2. Medical Evaluation of the Defendant

- a. Appointment of the Regional Center for Evaluation
 - 1) The regional center is notified to prepare an evaluation of the defendant's mental condition and determine if he/she is currently unable to cooperate with counsel and to understand the nature of the court proceedings due to a developmentally disability.
 - 2) Matter is continued for approximately three weeks.
- b. The regional center's report is considered by the court and counsel.
 - 1) If defense counsel agrees with the regional center's finding, the matter is submitted.
 - 2) The court may then make the finding of defendant's competence.

3. Defendant is Competent

- a. The court finds the defendant is competent:
- b. Criminal proceedings are reinstated.
- c. If case was originally certified from preliminary level court, it is remanded to be re-set for further proceedings.
- d. If proceedings were suspended in superior court level, the readiness, trial or other hearing are re-set.

4. Defendant is Incompetent

- a. The court finds the defendant is not competent:
- b. Matter is referred back to the regional center for a recommendation on placement pursuant to PC 1370.1(a)(2).
- c. The regional center has 15 judicial days to submit a recommendation on placement to the court.

5. Placement (PC 1370.1(a)(1)(B)(I))

- a. Alternatives available for placement:
 - 1) State Hospital (such as Napa State Hospital)
 - 2) Local public or private treatment facilities
 - 3) Community out-patient treatment
- b. The court determines the most appropriate treatment facility and orders the defendant committed to same.

6. Commitment Order

- a. The court must state the maximum term of commitment.
 - 1) No more than three (3) years on a felony charge.
 - 2) No longer than one (1) year or the maximum term of confinement time available on a misdemeanor.
- b. The court must also state the total number of actual days credit for time served to be applied to the commitment. No good/work time is given.
- c. The clerk will prepare the commitment packet for the state hospital which shall include:
 - 1) Certified copy of the commitment to the State Department of Developmental Services (PC 1370.1)
 - 2) Certified copy of committing minute order
 - 3) Arrest report
 - 4) All previous psychiatric reports
 - 5) Rap Sheet
 - 6) Regional Center Evaluation(s)
- d. This packet will accompany defendant to state hospital.

7. Progress Reports (PC 1370.1(b)(1))

- a. Submitted to the court within 90 days of commitment.
 - 1) Includes the person's progress toward recovery of mental competence.
 - 2) If the defendant has not become competent and the report discloses that there is a substantial likelihood that he/she will become competent within the next 90 days, the court may order the defendant remain in the hospital or treatment facility.
- b. Within 150 days of commitment (or if the defendant becomes competent) the hospital or treatment facility shall submit a report on the defendant's progress.
 - 1) If the report indicates that there is no substantial likelihood that the defendant has become competent, the court shall return the defendant to court.
 - 2) The court will initiate conservatorship proceedings.
- c. At the end of 18 months, a defendant who is still hospitalized or on outpatient status shall be returned to court to a hearing pursuant to the procedures set forth in PC 1369. (PC 1370.1(b)(2))
 - 1) The court should order the hospital to complete an updated and current progress report for the defendant's potential to recover mental competence.
 - 2) After reviewing the current hospital report, the court will make a finding:
 - a) The defendant remains mentally incompetent. He/she will be returned to the state hospital for further treatment.
 - b) The defendant is now mentally competent to stand trial and criminal proceedings are reinstated.
 - c) The defendant remains mentally incompetent and appears to be **gravely disabled**.
 - i) The court will order the Conservator's Office to evaluate the defendant to determine if he/she is eligible for the appointment of a conservator. (WI 5350)
 - ii) The criminal case will be dismissed (or terminated).

8. Certificate of Competence (PC 1372(a)(1))

- a. Submitted by the hospital (or the director of the treatment facility) when it is determined that the defendant is mentally competent.
- b. Defendant must be removed from the hospital within 10 days of filing the Certificate in order to avoid the committing court from being charged for the continued housing of the defendant in the hospital.
- c. Counsel will either:
 - 1) Submit the finding of the hospital to the court for a finding that competency has been restored.
 - 2) Challenge the finding and move that an additional local doctor be appointed to determine present competency.
 - 3) Request a formal hearing where evidence is presented and witnesses are sworn.
- d. Upon completion of the hearing, (or upon stipulation of counsel) the court will find competency has been restored and reinstate criminal proceedings or find that competency is not restored and return the defendant to the hospital.

9. Maximum Term of Commitment (PC 1370.1(c)(1)(A))

- a. At the end of three years from the date of commitment (felony)
- b. At the end of one year from the date of commitment or at the end of maximum term of incarceration for the most serious offense charged, whichever is shorter (misdemeanor)
- c. If the defendant has not become competent he/she must be returned to court for a hearing. The court may:
 - 1) Dismiss (or terminate) the criminal charges in the furtherance of justice. (PC 1370(c)(2))
 - 2) Order the Conservators' Office to evaluate the defendant to determine if they are eligible for the appointment of a conservator pursuant to WI 5350, etc. (PC 1370(c)(2))

NOTE: The clerk should always send copies of its post-commitment documents to the state hospital and to the local regional center so that they can update or close their files.

D. NOT GUILTY BY REASON OF INSANITY (PC 1026)

“When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only such other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court.” (PC 1026(a))

1. Entering the Plea

- a. Normally, the defendant enters dual pleas of not guilty, and not guilty by reason of insanity at arraignment.
- b. Defendant may enter a single plea of not guilty by reason of insanity.
- c. Criminal proceedings are not suspended.

2. Evaluation of Defendant (PC 1027)

- a. The court orders a psychiatric evaluation be completed.
- b. The court must appoint two (2) and may appoint three (3) psychiatrists or licensed psychologists who meet the criteria described in PC 1027.

3. Trial

- a. Process is a two-phase (bifurcated) trial when dual pleas are entered.
- b. The guilt or innocence of the defendant must first be determined by trial, court or plea.
- c. The second phase of the proceedings determines the sanity of defendant at the time of the commission of the crime.
 - 1) Direct testimony may be taken from the doctors.
 - 2) The matter may be submitted on the written reports of the doctors if both parties stipulate.

4. Finding on the Defendant's Sanity by Jury or Court

- a. If the defendant is found to have been sane at the time of the commission of the offense, the court will proceed with sentencing.
- b. If the defendant is found not to have been sane at the time of the commission of the offense, the defendant is subject to mental health commitment until which time his/her sanity is found to be restored.

5. Placement Recommendation

- a. Local mental health has 15 judicial days to complete an evaluation and recommendation. (PC 1026(b))
- b. Choices for commitment include:
 - 1) State Hospital (such as Patton State Hospital)
 - 2) Out-patient treatment
 - 3) Local in-patient treatment facility

6. The Commitment

- a. The maximum term of commitment shall be the maximum time to which the defendant could have been sentenced to if he/she had not been found guilty by reason of insanity. (PC 1026.5)
- b. This term, along with any pre-sentence custody credits, should be stated on the record and included in the clerk's minutes.
- c. The following items shall be provided by the court to the designated treatment facility (PC 1026(e)(1-7):
 - 1) The commitment order, including specification of charges
 - 2) A computation of the maximum term of commitment
 - 3) A computation of credit for time served to be deducted from the maximum commitment term
 - 4) Rap sheet
 - 5) Arrest/offense reports
 - 6) Any psychiatric reports
 - 7) The recommendation of the local mental health department

7. Progress Reports (PC 1026(f))

- a. Submitted within the first six (6) months and every six (6) months thereafter.
- b. Shall set forth the progress and status of the defendant.

8. Restoration of Sanity (PC 1026.2)

- a. After 180 days of commitment, the defendant or the director of the treatment facility may petition the court for hearing on the issue of restored sanity.
 - 1) If it is defendant petitioning the court, the treatment facility is ordered to complete a report and submit it to the court regarding the defendant's sanity.
 - 2) If the treatment facility is petitioning the court, the local mental health department is ordered to complete a report regarding placement in conditional release program (out-patient status).
- b. The court shall hold a hearing and determine if the defendant would be a danger due to mental defect, disease, or disorder if under supervision and treatment in the community. (PC 1026.11.2(e))
- c. If the court's decision is favorable to the petitioner:
 - 1) The defendant is placed with an appropriate local mental health program for one year.
 - 2) The defendant must complete 1 year in the conditional release program or be referred back to the court by the director of the conditional release program before the court can find sanity restored.
 - 3) At the end of one year on outpatient status, the court will hold a hearing to determine if the defendant's sanity has been restored.
- d. If the court's decision is not favorable to the petitioner:
 - 1) The defendant will be returned to the state hospital or outpatient treatment that he/she was in prior to the petition.
 - 2) A new petition cannot be filed for one year.

9. Petition for Commitment Extension (PC 1026.5)

- a. A report is prepared by the director of the treatment facility and provided to the prosecutor no later than 180 days prior to the expiration of the defendant's commitment.
- b. The prosecutor petitions the court to extend the commitment no later than 90 days prior to the expiration of the original commitment, unless good cause is shown.
- c. The defendant is returned to court and housed at a treatment facility or at the county jail pending hearing.
 - 1) The county jail must be able to provide the defendant with:
 - a) prescribed treatment,
 - b) adequate security, and
 - c) ensure the safety of the defendant
 - 2) The county jail also ensures the safety of the general population of the jail.
- d. The court appoints counsel and the defendant has the right to a jury trial.
- e. The defendant is arraigned on the petition and denies or admits the allegations.
 - 1) If the defendant admits the allegations of the petition, the court may immediately order him/her recommitted to the facility for an additional two years from the date of expiration of the original commitment.
 - 2) If the defendant denies the allegations of the petition, a date is set for a jury trial unless the jury is waived by the defendant and the prosecuting attorney.
 - a) If after trial, the defendant is found to still constitute a substantial danger to others, the court may order the person recommitted to the facility for an additional two years from the date of the expiration of the original commitment.
 - b) If the defendant is found to no longer pose a danger to others, he/she will be returned to the facility until the expiration of the original commitment.

E. OTHER CRIMINAL HEALTH MATTERS

**1. LPS Conservatorship Referral](WI 5008(H)(1)(B)–5350–WI 6500)
[Lanterman-Petris-Short Act]**

a. Qualifying Criteria

- 1) A defendant under commitment pursuant to PC 1370 or PC 1370.1 is not competent and:
 - a) Is not likely to regain competency in the foreseeable future; or
 - b) Has reached his/her maximum term of commitment and he/she shall be returned to court.
- 2) The defendant shall be referred to the office of the conservator for an evaluation as to his/her eligibility for the appointment of a conservator.

b. Eligibility

- 1) If the defendant is eligible for a conservator:
 - a) The office of the conservator will take over the care and treatment.
 - b) The criminal action is subject to dismissal pursuant to PC 1385.
- 2) If the defendant is not eligible for a conservator:
 - a) He/she shall not be subject to further confinement.
 - b) The criminal action is subject to dismissal pursuant to PC 1385.

NOTE: A copy of the court's final disposition orders should be forwarded to the state hospital and to the appropriate agencies (Dept. of Mental Health of Regional Center).

F. MENTALLY DISORDERED PRISONERS (PC 2972)

1. Definition

- a. For state prisoners who stand convicted of crimes listed in PC 2962(e)(2) who suffer from severe mental disorders that are not in remission or cannot be kept in remission without treatment. Not to be confused with Sexually Violent Predators (WI 6600) (PC 2962(a))
- b. Mental disorders were one of the causes of, or was an aggravating factor in, the commission of the crime.
- c. The prisoner must have been receiving treatment for a minimum of 90 days during the year prior to his/her scheduled release.

2. Request for Extension of Treatment

- a. Department of Corrections submits recommendation to the District Attorney of the county of commitment that a petition be filled with the court to extend treatment.
- b. District Attorney files a Petition for Extension of Commitment with the court.

3. Hearing re Extension

- a. Defendant has a right to court appointed counsel and to a jury trial.
- b. The standard of proof is beyond a reasonable doubt and the jury verdict must be unanimous.
- c. Trial must commence no later than 30 calendar days prior to defendant's scheduled release date unless he/she waives time.

4. Finding/Re-Commitment

- a. The jury (or court) can find that the defendant has a severe mental disorder that is not in remission or cannot be kept in remission and that he/she represents a substantial danger of physical harm to others.
- b. The Court shall order the defendant recommitted to the facility he/she was previously confined in or recommitted to outpatient treatment or committed to the State Department of Mental Health if the person was in prison.

5. Term of Commitment

- a. The commitment shall be for one year from the date of termination of parole or a previous commitment or the scheduled release date from prison.
- b. Prior to the expiration of the commitment, another petition may be filed asking for another extension.

G. SEXUALLY VIOLENT PREDATORS (WI 6600 - 6609.3)

1. Qualifying Criteria

- a. Definition - A “sexually violent predator” is a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he/she will engage in sexually violent criminal behavior.
- b. Crime was committed by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
- c. Sexual Offenses that Constitute Sexually Violent Behavior:
 - 1) PC 261(a)(2) - Rape with force, etc.
 - 2) PC 262(a)(1) - Rape of Spouse with force, etc.
 - 3) PC 264.1 - Acting in concert with another to commit rape with force, etc.
 - 4) PC 288(a) - Lewd and lascivious acts on a minor
 - 5) PC 288(b)(1) - Lewd and lascivious acts on a minor with force, etc.
 - 6) PC 288(b)(2) - Lewd and lascivious acts with force, etc., on a dependant adult by a caretaker
 - 7) PC 289 (a) - Penetration of a foreign object
 - 8) PC 286 - Sodomy
 - 9) PC 288a - Oral Copulation

d. Other Qualifying Criteria

- 1) Prior finding of not guilty by reason of insanity for an offense listed above.
- 2) A conviction before July 1, 1977, for an offense listed above
- 3) A conviction that resulted in a finding the person is a mentally disordered sex offender
- 4) A conviction from another state that includes the elements listed above

2. Preliminary Evaluation - Before Filing with the Court

- a. Director of Corrections makes a determination that a person currently incarcerated may be a sexually violent predator at least 6 months prior to his/her scheduled release date.
- b. Person is screened by Department of Corrections and Board of Prison Terms based on the following:
 - 1) Offense person was committed on is a sexually violent offense
 - 2) Review of person's social, criminal, and institutional history
- c. Person will be referred to State Departmental of Mental Health for full evaluation if found to be a likely sexually violent predator.
- d. Full Evaluation will include the following:
 - 1) Assessment of diagnosable mental disorders
 - 2) Risk factors of repeat sex offenders including:
 - a) criminal and psychological history
 - b) type, degree, and duration of sexual deviation
 - c) severity of mental disorder
- e. Person shall remain in custody no more than 45 days for full evaluation unless release date is more than 45 days from the date of referral.

- f. Evaluation shall be done by 2 psychiatrists, 2 psychologists, or 1 psychiatrist and 1 psychologist.
 - 1) Both doctors must concur the person has a diagnosable mental disorder so that the person is likely to engage in acts of sexual violence without appropriate treatment and custody.
 - 2) Director of Mental Health shall request a petition for commitment pursuant to WI 6602 if both doctors concur.
 - 3) Director of Mental Health shall arrange for further examination if both doctors do not concur.
- g. Further examination shall be done by 2 independent professionals.
 - 1) Both doctors must concur that the person meets the criteria for commitment.
 - 2) The doctors must advise the person that the evaluation is not for treatment but to determine if the person meets the criteria for an involuntary commitment.
- h. Director of Mental Health has a determination that the person meets the criteria of a sexually violent predator.
 - 1) Request for Petition for Commitment is made.
 - 2) Request is sent to the designated counsel in the county that convicted the person.
 - 3) Designated counsel shall be the district attorney or county counsel.
 - 4) The Board of Supervisors shall determine who the designated counsel shall be in each county.
- i. Designated counsel must make a determination that a petition for commitment shall be filed.
 - 1) Counsel must notify the State Department of Mental Health of the decision.
 - 2) Notice must be made within 15 days of the decision.

3. Processing the Petition for Commitment

- a. District Attorney's Office files a petition for commitment if they concur with the recommendation of the State Department of Mental Health.
- b. A judge shall review the petition and determine whether there is probable cause to believe that the individual is likely to engage in sexually violent predatory criminal behavior upon his/her release.
 - 1) If no probable cause exists, the person is released on parole.
 - 2) If the court finds that there is probable cause, he/she shall order the person to remain in custody until a trial is held and set a date for trial.
 - 3) Court shall notify State Department of Mental Health the outcome of the probable cause hearing by sending a copy of the minute order within 15 days of the decision.
 - 4) Clerk's Tip: fax the minute order to DMH since beds go fast.

4. Urgency Review (WI 6601.5)

- a. District attorney may request the court to review the petition on an urgency basis if the inmate is to be released from the Department of Corrections soon.
- b. The court shall review the petition to determine whether the petition states sufficient facts to believe the person is likely to engage in sexually violent behavior.
- c. If the court finds probable cause, the court shall order the person be detained in a secure facility until a hearing under WI 6602 can be held.
- d. The 6602 hearing shall be held within 10 calendar days of the date of the order issued by the court.

5. Trial

- a. The person is entitled to trial, assistance of counsel (court appointed if necessary), appointment of experts and/or professionals to perform examinations on their behalf, and access to all relevant medical reports.
- b. Petitioning attorney or the person is entitled to demand a trial by jury. If no demand is made, the trial shall be by the court.
- c. The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. A unanimous decision is required in a jury trial.
- d. If the person is found not to be a sexually violent predator, they shall be released.
 - 1) At the conclusion of the term for which they were originally sentenced;
 - 2) At the end of parole, whichever is applicable.
- e. If the person is found **to be** a sexually violent predator, the person shall be committed for two years to the State Department of Mental Health for appropriate treatment and confinement in a secure facility.
- f. Copy of trial decision minute order must be sent to Department of Mental Health within 72 hours.

6. Time of Commitment

- a. Commitment shall commence on the date upon which the court issues the initial order of commitment.
- b. Commitment time shall not be reduced by any time spent in a secure facility prior to the order of commitment.
- c. Subsequent commitments shall commence from the date of termination of the previous commitment.

7. Post Commitment Matters (WI 6605)

- a. Person committed as a sexually violent predator shall be evaluated by State Department of Mental Health at least once a year.
- b. Written notice of the person's right to petition the court for conditional release under WI 6608 shall be given to the person annually. The notice shall contain a waiver of rights.
- c. Director shall forward an annual report to the court with the written notice and waiver of rights.
- d. If the committed person does not affirmatively waive his rights, the court shall:
 - 1) Set a show cause hearing to determine whether facts exist that warrant a hearing on changes in the person's condition.
 - 2) Person has a right to be present and have counsel represent him at the hearing.
- e. Outcome of the show cause hearing:
 - 1) Court finds probable cause exists that committed person's mental disorders have changed, that person is no longer a danger to the health and safety of others if discharged.
 - 2) A hearing on the issue will be set.
- f. Subsequent hearing:
 - 1) Committed person has a right to be present.
 - 2) Committed person has a right to the same constitutional protection given at the first hearing.
 - 3) The state is represented by the same attorney designated in the earlier proceedings and has the right to demand a jury.
 - 4) Committed person has the right to demand jury and have experts evaluate him on his behalf. Court shall appoint experts if the person is indigent and requests the appointment.

- 5) The state has the burden of proof to show beyond a reasonable doubt the committed person's mental disorder remains such that he is a danger to the health and safety of others if discharged.
 - a) If the court or jury rules against the committed person, the term of commitment shall run for a period of two years from the date of the ruling.
 - b) If the court or jury rules in favor of the committed person, he shall be unconditionally released and unconditionally discharged.
- g. Once the State Department of Mental Health has reason to believe committed person is no longer a sexually violent predator:
 - 1) Department shall seek judicial review of the commitment pursuant to Section 7250 in the superior court that made the commitment.
 - 2) If the court determines the person is no longer a sexually violent predator, the person shall be unconditionally released and unconditionally discharged.

8. Director of Mental Health Recommends Conditional Release (WI 6607)

- a. Director of Mental Health determines the person's mental disorder has changed, that the person is not likely to commit acts of sexual violence while under supervision and treatment in the community.
- b. A report and recommendation for conditional release is sent to the county's designated attorney, the attorney of record for the committed person, and the committing court.
- c. The court shall set a conditional release hearing pursuant to WI 6608.

9. Inmate's Petition for Conditional Release (WI 6608)

- a. Committed person can petition the court for a conditional release without a recommendation or concurrence of the Director of Mental Health.
- b. Person is entitled to the assistance of counsel in making the request.
- c. If the request is denied either on court review of the petition or as the result of a hearing, and the court makes a determination the petition was frivolous, the court shall deny subsequent petitions by the person unless it contains facts the court could find that a hearing is warranted.

- d. The court shall review the petition and determine if it is based on the frivolous grounds. If it is found to be frivolous, the court will deny the petition without a hearing.

10. Conditional Release Hearing (WI 6608)

- a. The court shall give 15 days notice of the hearing to the following:
 - 1) District attorney or county counsel
 - 2) Attorney of record for the committed person
 - 3) Director of Mental Health
- b. A conditional release hearing cannot be held until the person has been committed for at least one year from the date of the order of commitment.
- c. Purpose of the hearing is to determine if the person would be a danger to the health and safety of others by engaging in sexually violent criminal behavior if under supervision and treatment in the community.
 - 1) If the court finds the person is not a danger while under supervision, the person shall be placed with a forensic conditional release program operated by the state for one year.
 - 2) The court shall retain jurisdiction of the person throughout the course of the program.
- d. The community health director shall submit a written recommendation to the court.
 - 1) The recommendation shall specify which forensic conditional release program is appropriate for the person.
 - 2) If the court accepts the recommendation, the community health director shall make the necessary placement arrangements.
 - 3) The community health director shall place the person in the community within 21 days of receiving notice of the court's finding.
 - 4) If the court does not accept the recommendation, the court shall specify the reasons on the record.

- e. A review hearing will be held after one year to determine if the person should be unconditionally released from commitment.
 - 1) The court shall make this determination when the person has completed at least one year in the conditional release program.
 - 2) The Director of Mental Health shall be notified by the court of the hearing date.

11. Notice to Law Enforcement Officials (WI 6609.1)

- a. Person ordered released by the court (WI 6609.1(c))
 - 1) Court shall notify the Department of Corrections Sexually Violent Predator Parole Coordinator.
 - 2) Parole Coordinator shall notify:
 - a) State Department of Mental Health
 - b) The sheriff, chief of police, or other such official of the community where the person is to be released
 - c) Notice shall be given regardless whether the person will be serving a term of parole after release by the court.
- b. Person to be released shall remain in custody for a period not to exceed 72 hours or until parole arrangements have been made, whichever is sooner. (PC 6609.1(d))
 - 1) Notice of pending release shall be made by telephone call or fax.
 - 2) Notice shall be made as soon as possible in advance to allow CDC (California Department of Corrections) to complete parole arrangements before the person's release.

VII. DRUG RELATED PROCEEDINGS

A. DEFERRED ENTRY OF JUDGMENT (DRUG DIVERSION) (PC 1000 ET. SEQ.)

1. Before January 1, 1997

- a. Defendant is charged with certain possession or use of controlled substance violations.
- b. Jury trial and time waivers are made on the record.
- c. Criminal proceedings are suspended.
- d. Defendant is ordered into a drug diversion program.
 - 1) Successful completion of program:
 - a) Charges are dismissed.
 - b) Case is over.
 - 2) Unsuccessful completion of program:
 - a) Criminal proceedings are reinstated.
 - b) Defendant proceeds to trial.

2. After January 1, 1997

- a. Eligibility criteria remains the same.
- b. Defendant must enter a guilty plea before entering diversion.
- c. Sentence is deferred pending completion of the program.
 - 1) Successful completion of program:
 - a) Guilty plea is withdrawn.
 - b) Charges are dismissed.
 - 2) Unsuccessful completion of program:
 - a) Defendant is not entitled to trial.
 - b) Defendant proceeds immediately to sentencing on plea taken earlier in the case.

3. Qualifying Criteria

- a. District Attorney reviews file/criminal record for following elements:
 - 1) No convictions for any offense involving controlled substances prior to the alleged commission of the charged offense.
 - 2) Offense charged does not involve a crime of violence or threatened violence.
 - 3) No evidence of a violation relating to narcotics or restricted drugs.
 - 4) Defendant's record does not indicate that probation or parole has ever been revoked without, thereafter, being completed.
 - 5) No prior felony convictions within 5 years.
- b. District Attorney discloses the results of the review.
 - 1) Results are given to defense counsel and the Court.
 - 2) Results must be disclosed at the earliest possible date after filing of the complaint.
- c. Sole remedy for defendant found ineligible for deferred entry of judgment is a post conviction appeal.

4. Plea to Charges (PC 1000.1(3))

- a. Plea must be guilty; "no contest" or nolo contendere plea is not allowed.
- b. Plea is as charged to counts involving the use or possession of controlled substances.
- c. Defendant must waive right to speedy sentencing.
- d. Defendant must be advised of the maximum sentence that could be imposed if defendant fails the program.
 - 1) Court has sentencing discretion.
 - 2) Court could impose whatever sentence it feels is appropriate.

- e. Defendant's custody status.
 - 1) Bail is exonerated. (PC 1000.2)
 - 2) Defendant shall be released from custody upon being accepted into the program.
 - 3) Court may release defendant on own recognizance.
- f. Plea is not counted as a conviction for statistical purposes at this time. (PC 1000.1)

5. Monitoring the Defendant

- a. Court may set hearings as deemed necessary to verify proof of enrollment or completion of the program.
- b. Program must be at least 18 months and no more than 3 years from time of referral.

6. Failure to Successfully Complete the Program (PC 1000.3)

- a. Criteria for failing the program:
 - 1) Defendant performed unsatisfactorily in the program.
 - 2) Defendant not benefiting from the education, treatment or rehabilitation being provided.
 - 3) Defendant becomes convicted of a misdemeanor that reflects his/her propensity for violence.
 - 4) Defendant becomes convicted of a felony.
 - 5) Defendant has engaged in criminal conduct that makes him/her unsuitable for the program.

b. Follow-Up Diversion Hearing Set

- 1) Defendant is notified to appear before the Court.
- 2) If the Court finds any of the above allegations to be true:
 - a) The defendant shall be excluded from the program.
 - b) Court shall render a finding of guilt to the charge(s) as previously pled and enter judgment.
 - c) Matter will be set for sentencing hearing or defendant may waive time and request immediate sentencing.

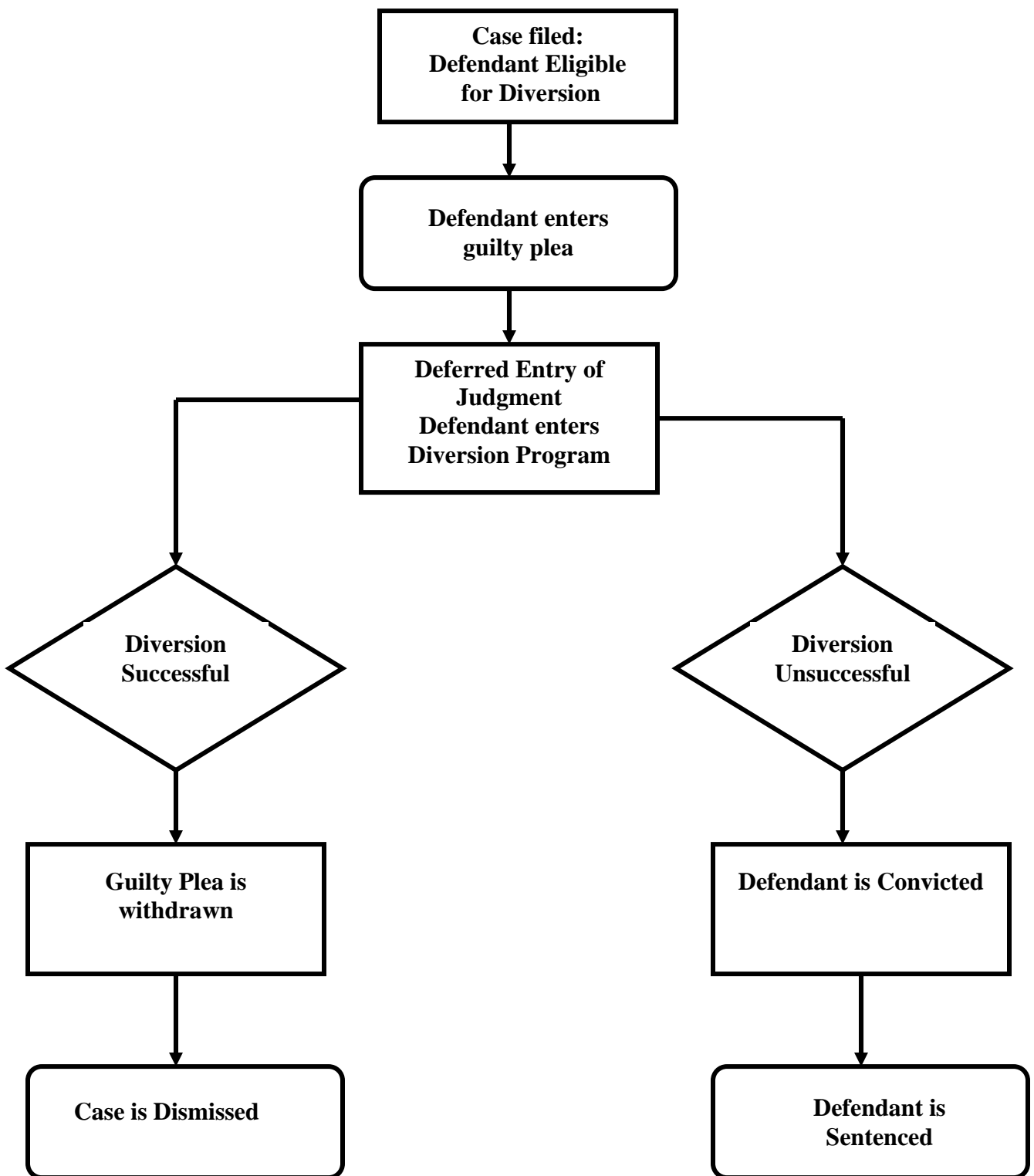
c. Sentencing Hearing

- 1) Defendant may be sentenced to the maximum term or any lesser term the Court deems appropriate.
 - 2) Sentence will be based on defendant's criminal record and background.
- d. Defendant may not withdraw plea based on the fact he/she is now excluded from the drug program.

7. Successful Completion of Program (PC 1000.4)

- a. Guilty plea to all charges is withdrawn.
- b. Pending criminal charges are dismissed.
- c. Arrest is deemed to have never occurred.
 - 1) Defendant may indicate that he/she was never arrested or granted deferred entry of judgment **unless** applying for a position as a peace officer.
 - 2) Department of Justice will disclose the arrest and disposition in response to any peace officer application request.

· 8. 1000 Deferred Entry of Judgment (Drug Diversion) Overview



B. DRUG COURT

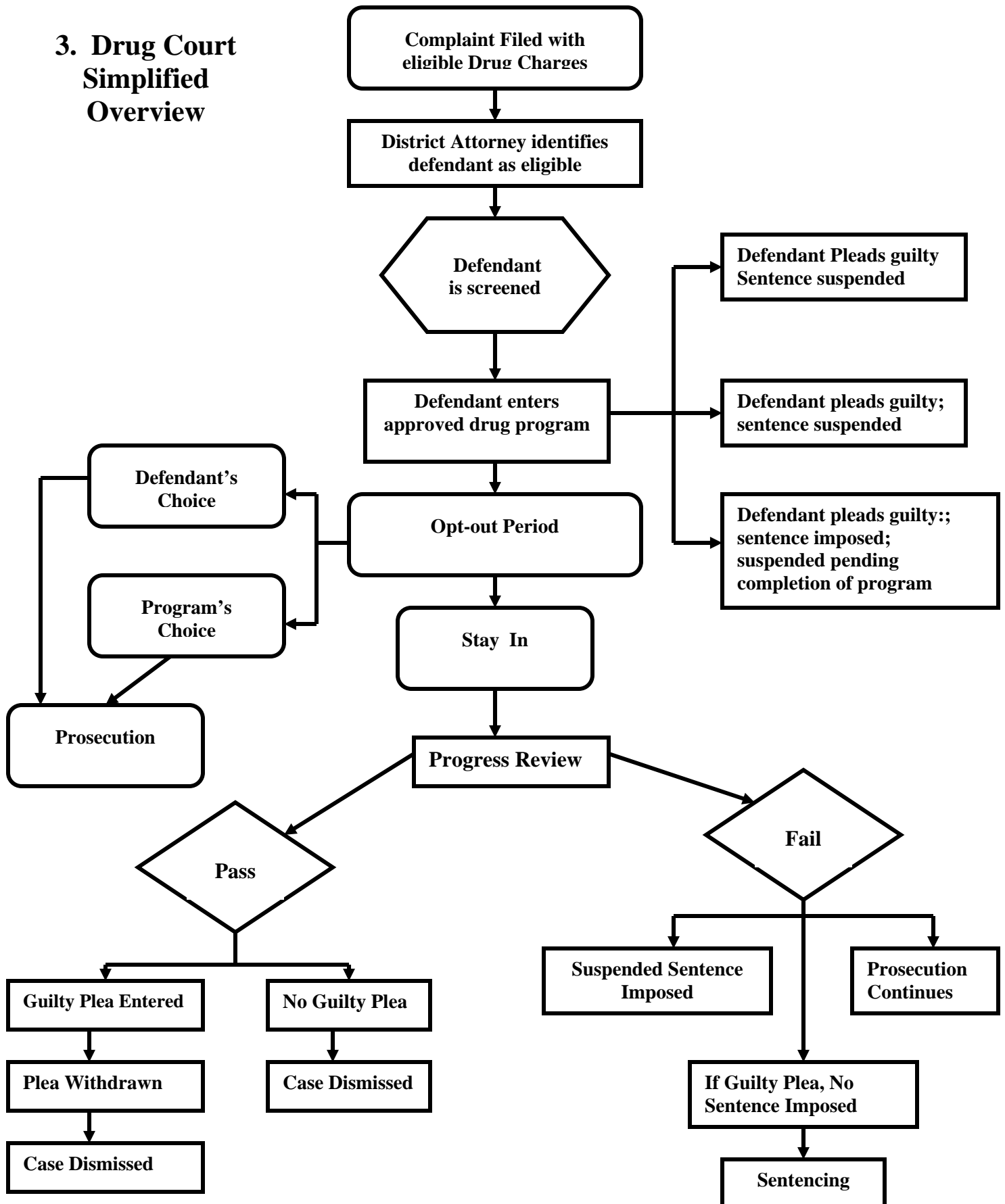
1. Focus of Drug Court

- a. Program is to help get moderately to severely addicted offenders off drugs and into immediate treatment.
 - 1) Program is initiated after a significant triggering event (arrest).
 - 2) The drug treatment will help the participant achieve sobriety and self-reliance in the community.
- b. The criminal prosecution track will deviate from normal and will vary from court to court.
 - 1) For example: One program model may suspend criminal proceedings and initiate drug court treatment.
 - 2) Other program models may require the participant to enter a guilty plea; the court will suspend imposition of a sentence and place the defendant on three years probation with drug court conditions.

2. The Drug Court Team

- a. Judge conducts judicial supervision of the participant by frequent court appearances and review of progress reports.
- b. Defense counsel and prosecuting attorney are in “non-adversarial” roles by promoting the participant’s success with a common goal toward the participant’s graduation from the program.
- c. Probation officer and health care professional act as the treatment team that provides supervision and treatment services (probation supervision and treatment services may vary from court to court).

3. Drug Court Simplified Overview



4. General Procedures

- a. Each Drug Court will set up its own eligibility standards for participants and at what level (misdemeanor or felony) they will operate.
- b. Prosecuting attorney will provide early identification and will advise the court of potentially eligible defendants at arraignment or other pretrial hearing.
- c. Defendant will be advised of the nature of the program and the consequences of failing to comply with the terms of the program.
- d. Defendant will be further screened for eligibility by Probation Department, Intake Services, or some other similar agency.
- e. Defendant will also be screened for suitability issues (dual diagnosis, behavior problems, etc.) by treatment personnel.
- f. Conviction and sentence of the defendant varies by court (see flowchart on preceding page):
 - 1) Defendant may enter a drug treatment program before a plea has been entered.
 - 2) Defendant may be asked to enter a guilty plea with sentence suspended similar to the Drug Diversion program.
 - 3) Defendant may enter a guilty plea, be sentenced, and have imposition of the sentence suspended.
- g. Defendant will enter the Drug Court Program.
 - 1) Local court may have a 14-day “opt-out” or “kick-out” policy that allows the defendant to withdraw his plea.
 - 2) This policy allows the defendant time to determine if he feels he can meet the standards of the program, or
 - 3) Allows the treatment provider to make further determination of defendant’s suitability for the program.
 - 4) Criminal proceedings will be reinstated and the case will proceed with the prosecution track should the defendant leave the treatment program at this stage.

5. Drug Program Treatment

- a. Length of time in the program will vary; minimum time may be one year but is usually 14-16 months.
- b. Treatment may be from a state licensed and approved drug treatment facility (some go into a residential setting).
- c. Individual and group counseling is provided and participants will be in twelve step programs (this is especially true in most outpatient treatment.)
- d. Pay costs of program/administrative fees as well as costs of probation and health care fees.
- e. Sanctions and rewards as appropriate will be used to facilitate compliance with program treatment.

6. Defendant Progress Review

- a. Court Review Hearings
 - 1) Ongoing and frequent judicial supervision.
 - 2) Frequency of hearings will vary by court and is based on the defendant's compliance and progress in the program.
 - 3) Tone of hearings may be congratulatory or chiding depending on defendant's progress (much judicial "cheerleading" and support from drug court team to participant)
- b. Random and frequent drug testing (results are confidential)
- c. Written progress reports (confidential)

7. Compliance with the Drug Treatment Program

- a. Incentives
 - 1) Praise from the judge
 - 2) Courtroom recognition (applause)
 - 3) Tokens of advancement
 - 4) Rewards (theater or restaurant coupons)
 - 5) Dismissal of charges (graduation)

b. Sanctions

- 1) Jail
- 2) Monetary
- 3) Community Service
- 4) Increase in Review Hearings
- 5) Essays
- 6) Increase in meetings
- 7) Increase in testing

8. Graduation and Termination from Drug Program

a. Successful

- 1) Criminal proceedings will vary by court (see flowchart)
- 2) Certificate of Completion is Awarded
- 3) Lots of fanfare: applause, reception, congratulations

b. Unsuccessful

Criminal proceedings will vary by court (see flowchart)

9. Ten Key Components of a Drug Court*

- a. **Key Component #1:** Drug courts integrate alcohol and other drug treatment services with justice system case processing.
- b. **Key Component #2:** Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- c. **Key Component #3:** Eligible participants are identified early and promptly placed in the drug court program.
- d. **Key Component #4:** Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- e. **Key Component #5:** Abstinence is monitored by frequent alcohol and other drug testing.
- f. **Key Component #6:** A coordinated strategy governs drug court responses to participants' compliance.
- g. **Key Component #7:** Ongoing judicial interaction with each drug court participant is essential.
- h. **Key Component #8:** Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- i. **Key Component #9:** Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
- j. **Key Component #10:** Forging partnerships among drug courts, public agencies, and community-based organizations generate local support and enhances drug court effectiveness.

**Reprinted from "Defining Drug Courts: The Key Components", published January, 1997, by The National Association of Drug Court Professionals and the Drug Court Standards Committee in conjunction with the U.S. Department of Justice, Office of Justice Programs, Drug Courts Program Office*

C. PROPOSITION 36

1. BACKGROUND

On November 7, 2000, California voters passed Proposition 36: the Substance Abuse and Crime Prevention Act of 2000. Proposition 36 requires all offenders convicted of non-violent drug possession offenses, existing County probationers and State Parolees who commit offenses within the provisions of Section 1210.1 of the Penal Code to be referred to treatment rather than being sentenced to State prison or local custody.

2. INTRODUCTION (PENAL CODE SECTION 1210.1(a))

- a. Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation.
- b. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose.
- c. In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

3. ELIGIBILITY REQUIREMENTS

Proposition 36 mandates treatment for all eligible offenders on and after July 1, 2001. Proposition 36 would generally apply to *three types of people*:

- a. Those convicted of a non-violent drug possession offense are eligible. (PC 1210.1(a)) A “non-violent drug possession offense” is defined as the possession, use or transportation for personal use of any controlled substance, or the offense of being under the influence of a controlled substance in violation of Health & Safety Code Section 11550. It does not include possession for sale, production, or manufacturing of any controlled substance.

Defendants with new convictions for drug offenses qualify for treatment provided that they are not convicted of sales or manufacture or any non-drug crimes at the same time. Offenders are excluded if

they have a prior conviction for serious or violent felony (“strikes”), unless they have served their prison time and have been out of prison for a period of five years with no felony convictions or misdemeanor convictions involving the threat of violence.

- b. Persons on probation for drug possession or being under the influence offenses. (PC 1210.1(e)(3)(D))

Defendants previously convicted of a Proposition 36 qualifying drug offense, may become eligible for treatment under the proposition 36 guidelines in the event he or she violates a condition of probation deemed to be “drug-related” within the guidelines of Penal Code Section 1210.1. It is the courts discretion to revoke or modify probation, which could include participation in a drug treatment program.

- c. Persons on parole with no prior convictions for a serious or violent felony. (PC 30063.1(a) & PC 3063.1(d)(3)(C))

After July 1, 2001, a person on parole who commits a non-violent drug possession offense or who violates a drug-related condition of parole may be eligible for treatment in the community, instead of returning to prison. To qualify, the parolee must have no prior convictions at any time for a serious or violent felony. Parole authorities, rather than the courts, will set monitoring conditions for these parole violators, and will punish violations of the treatment program. The Parole authority must impose, as a condition of parole, participation in and completion of an appropriate drug treatment program.

4. EXCLUDING FACTORS — Penal Code Section 1210.1(b)(1)

- a. Any defendant who previously has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7 unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in (A) a felony conviction other than a nonviolent drug possession offense, or (B) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.
- b. Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

- c. Any defendant who:
 - 1) While using a firearm, unlawfully possesses any amount of: (i) a substance containing either cocaine base, cocaine, heroin, methamphetamine, or (ii) a liquid, non-liquid, plant substance, or hand rolled cigarette, containing PCP.
 - 2) While using a firearm, is unlawfully under the influence of cocaine, heroin, methamphetamine or PCP.
 - 3. Any defendant who refuses drug treatment as a condition of probation..
- d. Any defendant who (A) has two separate convictions for nonviolent drug possession offenses, (B) has participated in two separate courses of drug treatment pursuant to subdivision (a), and (C) is found by the court, by clear and convincing evidence, to be not amenable to any and all forms of available drug treatment. Notwithstanding any other provision of law, the trial court shall sentence such defendants to 30 days in jail.
- e. Any defendant who is also charged with and convicted of a “misdemeanor not related to the use of drugs” in the same proceeding as a nonviolent drug possession offense is excluded from Proposition 36 treatment (PC 1210.1(b)(2). Subdivision (d) of PC 1210 defines a “misdemeanor not related to the use of drugs” as a misdemeanor that does not involve:
 - 1) Simple possession or use of drugs or drug paraphernalia;
 - 2) Being present where drugs are used;
 - 3) Failure to register as a drug offender; or
 - 4) “Any activity similar to those listed above.”

5. COMPLAINT FILED

- a. Felony cases in which the defendant is eligible for treatment under the guidelines set forth in Section 1210.1 of the Penal Code will be filed in the originating court. If the defendant meets the requirements set forth in PC 1210.1, the District Attorney will submit the “STATEMENT OF PENAL CODE SECTION 1210.1(a) ELIGIBILITY” when the complaint is filed. In addition to the “Statement of Penal Code Section 1210.1(a) eligibility form, the District Attorney will provide the court with Notice of Eligibility and Program Description form.

- b. The clerk will make the Proposition 36 case by stamping PC 1210.1 on the outside front cover under the name/case number.
- c. When the complaint is filed, the court clerk will make an out of court entry calendaring the case for arraignment.

6. FELONY ARRAIGNMENT

In courts that conduct a felony arraignment in Proposition 36 cases, the following will occur:

- 1. The defendant will be advised of his/her rights;
- 2. The defendant will be advised of the charges alleged;
- 3. A public defender or Indigent Defense Counsel will be appointed;
- 4. The defendant will enter a plea of not guilty.
- 5. A preliminary hearing will be scheduled within 10 days of arraignment, with a pre-preliminary hearing date set before that time at the court's discretion, unless the 10-day requirement is waived.
- 6. The case will be set for a preliminary hearing in eight (8) days;
- 7. Bail will be set, or the defendant will remain at liberty on his/her bond.

7. PROPOSITION 36 – ELIGIBLE CASES

When the defendant appears at the pre-preliminary hearing, he/she will have the opportunity to enter a plea to the charges alleged. Or, he /she may maintain the plea of not guilty and proceed with the preliminary hearing.

a. Pre-Preliminary Hearing/Plea Entered

- 1. Defendant appears with counsel.
- 2. Deputy District Attorney present.
- 3. Probation Department present and provides the court with a short report (recommendation) on eligibility for Treatment.
- 4. Judicial Officer determines the eligibility of defendant, based upon the probation officers “**ELIGIBILITY**” report
- 5. The defendant will be advised of his/her rights and enter a plea of guilty or nolo contendere.

b. Pre-Preliminary Hearing/Defendant Maintains Plea of Not Guilty

Case will remain set for the preliminary hearing.

c. Refusal of Treatment

In the event the defendant is eligible for sentencing pursuant to the guidelines of PC 1210.1 and refuses treatment, the case will continue with the normal felony process.

8. REFERRAL FOR SERVICES

Pursuant to Penal Code Section 1210.1(c) Within seven days of an order imposing probation, the probation department shall notify the drug treatment provider designated to provide drug treatment. Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department. On a quarterly basis after the defendant begins the drug treatment program, the treatment provider shall prepare and forward a progress report to the probation department.

9. VIOLATION OF PROBATION

a. Pursuant to Penal Code Section 1210.1(c)(1) and (c)(2):

- 1) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is not amenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may move the court to modify the terms of probation to ensure that the defendant receives an alternative drug treatment program.
- 2) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is not amenable to the drug treatment provided and all other forms of drug treatment, the probation department may move to revoke probation. At the revocation hearing, unless the defendant proves by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable, the court may revoke probation.

b. PC 1210.1(e) Violation of Probation

- 1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

- 2) Non-drug-related probation violations. If a defendant receives probation under subdivision (a), and violates that probation either by being arrested for an offense that is not a nonviolent drug possession offense, or by violating a non-drug related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

c. Penal Code Section 1210.1(e)(3)(C)

If a defendant receives probation under subdivision (a), and for the third time violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a).

10. TERMINATION OF TREATMENT PROGRAM — PROBATION REVOKED

- a. In the event probation is revoked and the defendant is terminated from the treatment program, he/she may be incarcerated pursuant to otherwise, applicable law without regard to the provisions of Section 1210.1.
- b. When the court makes the finding that the defendant is in violation of probation, he/she will be sentenced without regard to the guidelines set forth in PC 1210.1.
- c. The court clerk will make a docket entry based upon the actions taken in court.

11. COMPLETION OF TREATMENT

a. PC 1210.1(d)(1)

At any time after completion of drug treatment, a defendant may petition the sentencing court for dismissal of the charges. If the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment or information against the defendant. In addition, the arrest on which the conviction was based shall be deemed never to have occurred. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

b. PC 1210.1(d)(2)

Dismissal of an indictment or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

**D. NARCOTIC ADDICTION AND CALIFORNIA REHABILITATION CENTER
- C.R.C.**

1. Review

- a. The defendant is sentenced to prison.
- b. Criminal proceedings are suspended pursuant to WI 3051.
- c. The District Attorney is ordered to file a petition for commitment as a narcotic addict.
- d. The defendant is examined by a medical doctor and a report is filed with the court.

OR

Counsel stipulate that defendant is a narcotic drug addict, waive filing of the petition, and waive the examination by a medical doctor.

- e. The defendant is found to not be addicted or in imminent danger of becoming addicted.
 - 1) The defendant is remanded to the sentencing judge's department.
 - 2) Criminal proceedings are reinstated. The sentence imposed is now executed.
- f. The defendant is found to be addicted or in imminent danger of becoming addicted and is committed to the California Rehabilitation Center (CRC).
- g. The maximum time of commitment at CRC is the same as the suspended sentence.
- h. A commitment package is prepared containing the following:
 - 1) A certified copy of the commitment order.
 - 2) A certified copy of the petition.
 - 3) A certified copy of the sentencing minute order.
 - 4) A certified copy of the accusatory pleading.
 - 5) Copies of all medical examination reports.
 - 6) A copy of the probation report.

2. CRC Returnee

- a. Discharges - Defendant has successfully completed the rehabilitation program at the CRC. (WI 3200/3201)
 - 1) Hearing is scheduled at the request of the CRC upon such notification.
 - 2) At the hearing:
 - a) Criminal proceedings are reinstated.
 - b) The commitment is vacated.
 - c. The court can modify the sentence, discharge the defendant or dismiss the criminal charges.
- b. Exclusions - Defendant has not successfully completed the rehabilitation program at the CRC. (WI 3053)
 - 1) Hearing is scheduled at the request of the CRC upon such notification.
 - 2) At the hearing
 - a) Criminal proceedings are reinstated.
 - b) The prison commitment previously imposed is now executed.
 - c) CRC custody credits/actual days only (no conduct credits) are given.
 - d) Prison packet is prepared; indicate prison term is imposed after a CRC exclusion.
 - 3) Always send minute orders to CRC on follow up hearings.
- c. Defendant has absconded while on rehabilitation program at CRC.
 - 1. Hearing is scheduled at the request of the CRC upon such notification.
 - 2. At the hearing:
 - a) Criminal proceedings are reinstated.
 - b) A bench warrant is issued.

VIII. DEATH PENALTY PROCEDURES

A. CRIME INVOLVED [PC 190.2(A)(1) ET. SEQ.]

1. Definition: Death or Life Without the Possibility of Parole (LWOP) can only be imposed for first degree murder if one or more of the following special circumstances is found to be true:
 - a. Intentional murder carried out for financial gain.
 - b. Defendant has previous conviction of first or second-degree murder.
 - c. The defendant has been convicted of more than one offense of first or second-degree murder at this proceeding.
 - d. The murder was committed by means of a destructive device, bomb, or explosive and defendant knew that it would create a great risk of death to one or more human beings.
 - e. The murder was committed to avoid lawful arrest, or perfecting or attempting to perfect escape from lawful custody.
 - f. The murder was committed by means of a destructive devise, bomb or explosive that the defendant mailed or delivered knowing that it would create a great risk of death to one or more human beings.
 - g. Intentional murder of a peace officer while engaged in or in retaliation for performance of his/her official duties.
 - h. Intentional murder of a federal law enforcement officer or agent while engaged in or in retaliation for the performance of his/her duties.
 - i. Intentional murder of a firefighter while engaged in the performance of his/her duties.
 - j. Intentional murder of a victim to prevent or in retaliation for his/her testimony in any criminal or juvenile proceeding.
 - k. Intentional murder of a prosecutor or assistant prosecutor carried out to prevent or in retaliation for the performance of his/her official duties.
 - l. Intentional murder of a judge or former judge (local, state, or federal, in this or any other state) carried out to prevent or in retaliation for the performance of his/her official duties.

- m. Intentional murder of a current or former elected or appointed government official (local, state, or federal, of this or any other state) carried out to prevent or in retaliation for the performance of his/her duties.
- n. Murder committed was especially heinous, atrocious, or cruel, manifesting exceptional depravity.
- o. Intentional murder while lying in wait.
- p. Intentional murder committed because of a person's race, color, religion, nationality, or country of origin.
- q. Murder committed while defendant engaged in the commission of one of the following felony crimes:
 - 1) Robbery [PC 211]
 - 2) Kidnapping [PC 207, 209, 209.5]
 - 3) Rape [PC 261]
 - 4) Sodomy [PC 286]
 - 5) Sexual abuse of a child under 15 years of age [PC 288]
 - 6. Oral Copulation [PC 288a]
 - 7) First degree burglary [PC 450, 460]
 - 8) Arson [PC 451]
 - 9) Train Wrecking [PC 219]
 - 10) Mayhem [PC 203]
 - 11) Rape by instrument [PC 289]
 - 12) Car jacking [PC 215]
- r. Intentional murder which involved the infliction of torture.
- s. Intentional murder by the administration of poison.
- t. Intentional murder of a juror in any court (local, state, or federal, in this or any other state) carried out to prevent or in retaliation for the performance of his/her duties.

2. The death penalty is prohibited for defendants who are under the age of 18 years at the time of the crime. [PC 190.5]
3. The District Attorney may elect not to ask for the death penalty or waive it at a later date prior to trial.

B. COST OF DEFENSE

1. Representation by Counsel

- a. The defendant is entitled to representation by counsel.
- b. The defendant may retain more than one attorney.
 - 1) Pursuant to PC 1095, two counsel may argue for each side.
 - 2) At least one of the defendant's attorneys must be present at each hearing.
- c. Counsel may be appointed
 - 1) Appointed counsel may make a written request to the court to have an additional attorney appointed as co-counsel. [PC 987(d)]
 - 2) Some courts may appoint one attorney to represent the defendant.
 - 3) Additional attorneys can be appointed to explore or address specific issues and are released after the issue is resolved or clarified.

2. Indigent Defendants

- a. An indigent defendant may apply for funds to pay for investigators, experts, and others for the preparation and presentation of his/her defense [PC 987.9]
- b. The application for funds is made through defense counsel by affidavit. The existence and content of such affidavit is confidential.
- c. At an in camera hearing, a judge or the court (other than the trial judge) shall rule on the request and disburse an appropriate amount of money to the defendant's attorney. All orders are confidential.
- d. At the conclusion of the case, defense counsel must provide the court with a complete accounting of all moneys received and disbursed.

C. COURT REPORTER REQUIREMENTS [PC190-9]

1. All proceedings (including proceedings in chambers) shall be conducted on the record with a court reporter present.
2. The court reporter shall prepare and certify a daily transcript of the proceedings.
3. The court must assign a court reporter who uses computer-aided transcription, if available.
4. The Court Reporter is required to prepare the following numbers of copies of the transcripts and disks:
 - a. Preliminary level court:
 - 1) Written transcript – Original plus 5 copies
 - 2) Computer disks – 6 copies
 - b. Trial court level
 - 1) Written transcript – Original plus 5 copies
 - 2) Computer disks – 5 copies (record complete)
 - 3) Computer disks – 6 copies (record accurate)
 - c. Each disk shall:
 - 1) Be labeled with the case name, court number, dates of proceedings contained on the disk, and the page and volume numbers of the data contained on the disk.
 - 2) Contain the identical volume divisions, pagination, line numbering, and text of the certified original paper transcript or any portion thereof.
 - 3) Be sequentially numbered within the series of disks.

D. PRELIMINARY PROCEEDINGS CERTIFICATION

Upon receiving notification from the prosecution that the death penalty is being sought, the responsible Superior Court judge must enter that information on the record and notify the presiding judge and clerk of the court. [CRC 34.2(b)(1)]

1. The court clerk of the preliminary level court shall within five days of receiving notice that the death penalty is being sought in a case, notify the court reporter(s) to prepare the transcript. [CRC 34.2(d)]
2. The primary court reporter shall deliver an original and 5 copies of the transcript to the preliminary level court clerk within 20 days after notice. [CRC 34.2(e)(3), (f)(1)]
3. Upon receipt of the court reporter's transcript, the preliminary level court clerk shall within 5 days deliver the original of the transcript to the responsible preliminary level judge with copies to counsel of record for review and certification. [CRC 34.2(e)(3), (f)(1)]
4. Within 30 days after delivery of the clerk and reporter's transcript, counsel shall file a request for corrections and/or additional transcripts. [CRC 34.2(f)(1)] If counsel fails to file a request for correction, the preliminary level court shall set an Order to Show Cause re certification of the record. [CRC 34.2(g)(4)]
5. The preliminary level court must certify the record as complete within 120 days of receipt of the notice to prepare the court record, unless time is extended by the court [PC 190.9(a)(2)]

E. JURY SELECTION

The manner of jury selection will vary greatly depending upon court policy and judicial preference. The sequence of jury selection will remain the same. Following are two examples of how voir dire may be handled.

1. For All Types of Jury Selection

- a. Court and counsel will meet. The judge will determine:
 - 1) The number of prospective jurors needed.
 - 2) The schedule (dates, times) for subsequent hearings to handle hardships, orientation, and voir dire.
 - 3) The content of the hardship and jury questionnaires to be used, if any.
 - 4) The initial instructions to be given to the prospective jurors at the first session, i.e. types of case, estimated time for the trial, and the use of questionnaires.

- b. At the direction of the court, the clerk will notify the Jury Commissioner's Office of the need to call for a special jury panel. The Jury Commissioner's Office will need the following information:
 - 1) The number or prospective jurors needed.
 - 2) The date and time required.

2. Jury Section I – Pre-Screening by Jury Commissioner's Office

- a. The judge (or a judicial committee) provides the Jury Commissioner's Office with a list of approved reasons to excuse prospective jurors from service on a case that is expected to take several weeks and/or months.
- b. When the prospective jurors report for service, they are pre-screened by the Jury Commissioner's Office personnel using the criteria given.
 - 1) This pre-screening does not provide information regarding any specific case.
 - 2) It's sole purpose is to identify prospective jurors available for the estimated length of the trial.
- c. The prospective jurors that meet the criteria are excused.
- d. The remaining jurors are given a pre-set date, time, and department to begin the jury selection process.
- e. When the prospective jurors appear, the clerk will proceed as follows:
 - 1) The clerk will welcome the prospective jurors, introduce himself/herself, and take roll.
 - 2) The clerk will then inform the prospective jurors that they will be sworn and, at the direction of the court, administer the oath to prospective jurors.
- f. The judge, counsel and the defendant may be present.
 - 1) If present, the judge will introduce himself/herself, counsel, the defendant.
 - 2) The judge will also provide information regarding the case, the jury selection process, and the use of hardship and trial.

- g. Hardship questionnaires will be handed out to those prospective jurors requesting them.
- h. The remaining jurors are given trial questionnaires to complete.
- i. Trial questionnaires:
 - 1) Each prospective juror returns the completed questionnaire to the clerk and is given a written notice as to when they are to return for the next phase of the jury selection process.
 - 2) Counsel is ordered to make the required copies of the questionnaire and to return the originals to the court.
 - 3) Original questionnaires will be maintained by the clerk.
 - 4) Questionnaires will be sealed at the conclusion of the trial.
 - 5) Prospective jurors return in smaller groups for voir dire.
 - 6) Most often 12-15 jurors are scheduled in the morning and the same number in the afternoon.
 - 7) The required number of days for this phase will depend on the number of prospective jurors left on the panel
- j. At the end of this questioning, the prospective jurors are either excused for cause or given another date to return for peremptory challenges and the commencement of trial.
- k. Prospective jurors return, peremptory challenges occur, panel is sworn. More peremptory challenges, then the alternates are sworn. Trial commences.

3. Jury Selection II – No Pre-Screening

- a. When the prospective jurors appear, the clerk will proceed as follows:
 - 1) The clerk will welcome the prospective jurors, introduce himself/herself, and take roll.
 - 2) The clerk will then inform the prospective jurors that they will be sworn and, at the direction of the court, administer the oath to prospective jurors.

- b. The judge, counsel, and the defendant may be present.
 - 1) If present, the judge will introduce himself/herself, counsel, and the defendant.
 - 2) The judge will also explain the jury selection process.
- c. The clerk is given criteria to excuse the prospective jurors (similar to the list given to the Jury Commissioner's Office in "Jury Selection I").
- d. Hardship questionnaires will be handed out to those prospective jurors requesting them.
- e. Remaining jurors will be given notices to return for orientation at a specific date and time.
- f. Orientation hearings:
 - 1) Groups of prospective jurors appear at daily scheduled hearing times and are given more in depth information about the case.
 - 2) The written trial questionnaire process is explained.
- g. The trial questionnaires are distributed and the prospective jurors are admonished and excused to the hallway to complete them.
- h. Each prospective juror returns the completed questionnaire to the clerk and is given a written notice as to when they are to return for the next phase of the jury selection process.
- i. Counsel is ordered to make the required copies of the questionnaires and to return the originals to the court.
 - 1) All original questionnaires must be maintained, retained by the clerk. [CRC 34.1 (a)(1)(A), (B), (C), 3]
 - 2) Questionnaires will be sealed at the conclusion of the trial.
- j. Prospective jurors return in smaller groups for the direct questioning phase of voir dire.
 - 1) The number of days required for this phase will depend upon the number of prospective jurors left on the panel.

- 2) At the end of this questioning, the prospective jurors are either excused for cause or given another date to return for peremptory challenges and the commencement of trial.
- k. Prospective jurors return peremptory challenges occur, panel is sworn. More peremptory challenges, the alternates are sworn. Trial commences.

4. Determination of Hardships

- a. Prospective jurors may request to be excused because serving on the panel would cause them some type of hardship.
 - 1) These prospective jurors must complete a hardship questionnaire.
 - 2) The completed questionnaires are submitted to Court and counsel.
 - 3) After review of the questionnaire, the prospective juror may either be excused or set for a hearing to discuss the claimed hardship.
- b. At the hearing re hardships, the Court and counsel will question the prospective juror about the claimed hardship. After questioning, the prospective juror will either be excused or ordered to return at a set date and time.

5. Peremptory Challenges

The minimum number of prospective jurors that is needed in order to allow counsel to exercise their peremptory challenges is determined as follows:

| | |
|--------|--|
| 20 | People's peremptories |
| 20 | Defense's peremptories |
| 12 | Members of the jury panel |
| varies | Agreed upon number of alternate jurors |
| varies | People's peremptories as to alternates |
| varies | Defense's peremptories as to alternates |
| varies | At least one (1) additional juror to maintain randomness |

F. TRIAL PHASES [PC 190.1]

1. Phase I – Guilt Phase

- a. Jury determines the guilt or innocence of the defendant as in any other trial. However, the event name is not just JURY TRIAL. The event name is TRIAL BY JURY IN THE GUILT PHASE OF A CAPITAL CASE or GUILT PHASE, JURY TRIAL OF A CAPITAL CASE.
- b. there will not be a second phase of the trial if:
 - 1) The defendant is acquitted (The case will be over.), or
 - 2) The jury finds that the alleged “special circumstance” is not true (the matter will be set for pronouncement of judgment.)
- c. If the defendant is found guilty of the crime and the jury finds that the alleged “special circumstances” is true, the penalty phase of the trial will commence.

2. Phase II – Penalty Phase

- a. Heard by the same jury that heard the guilty phase.
- b. Event name is TRIAL BY JURY IN THE PENALTY PHASE OF A CAPITAL CASE or PENALTY PHASE, JURY TRIAL OF A CAPITAL CASE.
- c. Exhibits may be marked continuously in the same manner used in the guilt phase (most common) or marked in a new sequence that pertains to the penalty phase only.
- d. In determining the penalty, the jury shall take into account any of the following factors [PC 190.3]:
 - 1) The circumstances of the crime of which the defendant was convicted in the present case and the existence of any special circumstances found to be true.
 - 2) The presence or absence of criminal activity by the defendant hat involved the use or attempted use of force or violence.
 - 3) The presence or absence of any prior felony convictions.

- 4) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.
 - 5) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.
 - 6) Whether or not the offense was committed under circumstances that the defendant reasonably believed to be a moral justification or extenuation for his/her conduct.
 - 7) Whether or not the defendant acted under extreme duress or under the substantial domination of another person.
 - 8) Whether or not at the time of the offense the capacity of the defendant was impaired by mental disease or defect, or the affects of intoxication.
 - 9) The age of the defendant at the time of the crime
 - 10) Whether or not the defendant was an accomplice and participation was relatively minor.
 - 11) Any other extenuating circumstances to the gravity of the crime.
- e. The jury shall impose the sentence of death if the jury concludes that the aggravating circumstances outweigh the mitigating circumstances.
- f. If the jury determines that the mitigating circumstances outweigh the aggravating circumstances, the jury shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.
- g. The verdict is actually a determination of the penalty that is to be imposed.
- 1) After the verdict, the matter would be set for pronouncement of judgment in normal course.
 - 2) It is advised that the Court get a time waiver from the defendant to set the time for pronouncement of judgment beyond the statutory time (6 to 8 weeks). This will allow sufficient time for the defendant's attorney to prepare and file motions that must be heard prior to the sentencing.

3. At the Pronouncement of Judgment

- a. Motions prior to sentencing
 - 1) Motion for new trial
 - 2) Motion for modification of death penalty – application for modification is deemed made at time of verdict of death.
 - 3) Court shall make a determination as to whether the jury's findings and verdicts (that aggravating circumstances outweigh mitigating circumstances) are contrary to law or the evidence presented.
 - 4) The judge shall state on the record the reasons for the findings.
 - 5) The judge shall set forth the reasons for his ruling of the application and direct the they be entered on the clerk's minutes[PC 190.4(e)]
- b. Sentencing will proceed in normal fashion with statements of victim/victim's family and friends, and imposition of sentence on each count and enhancement.
- c. If the death penalty is imposed, the prosecutor is ordered t prepare the judgment of death.
- d. Clerk notifies the Appeals Section of the sentence of death.

G. GENERAL JURISDICTION CERTIFICATION

The imposition of a judgment of death is an automatic appeal to the California State Supreme Court. [PC 1239] When a judgment of death is imposed the case must be certified prior to being suited to the Supreme Court. There are two phases of record certification that are required for death judgments. [PC 190.8]

1. Phase 1: Certification of Record as Complete

- a. Within 30 days of the judgment of death, the clerk shall deliver the entire record to trial counsel. [PC 190.8(b), (b), CRC 39.53(b)(4)]
- b. Within 30 days of receipt of the record, trial counsel shall submit a declaration requesting corrections and/or additions to the record. [CRC 39.54(b), CRC 35.1(b)(1), (3)]

- c. The trial court shall hold a hearing within 15 days of receipt of the declaration(s) from trial counsel requesting corrections and/or additions.
- d. Any corrections ordered must be prepared and delivered to the trial court within 10 days of the order.
- e. The trial court must certify the record for completeness within 90 days of the judgment of the death, unless time was extended. [PC 190.8(d), CRC 35.1(3), (d)(6), (7)]

2. Phase II: Certification of Record as Accurate

- a. When notified of the appointment of appellate counsel, the clerk of the trial court shall deliver a copy of the record on appeal to appellate counsel.
- b. The trial court may hold a hearing for the purpose of timely certification of the record for accuracy. [PC 190.8(g)]
- c. Appellate counsel must file request for corrections and/or additions within 90 days of receipt of record on appeal. [CRC 34.2(g)(3); 35.2(a)(1), (2)]
- d. The trial court shall hold a hearing within 15 days of receipt of the declaration (s) from appellate counsel requesting corrections and/or additions. [CRC 35.2(b)(1), (d)(2)]
- e. Any corrections and/or additions must be filed with the trial court within 10 days of the order. [RC 35.2(b)(1)]
- f. The trial court must certify the record for accuracy within 120 days of delivery of the record to appellate counsel. [CRC 35.2(b)(1)]

H. POST SENTENCING (WITHIN 10 DAYS)

- 1. Clerk prepares any prison abstract forms required.
- 2. District Attorney submits Judgment of Death (original plus six copies) for signature. If the DA does not supply the copies, they must be prepared by the clerk.
- 3. All copies of the judgment of death are signed by judge.

4. Clerk mails a certified copy of the Judgment of Death and sentencing minutes to:

- a. Governor of the State of California
State Capital Building
Sacramento, CA 94814
- b. Clerk, California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102 (415) 865-7000
- c. California Appellate Project
1 Ecker place, Suite 400
San Francisco, CA 94105 (415) 495-0500
- d. Office of the Attorney General (Select the office for your court area)

Fresno: 2550 Mariposa Mall, Room 5090, Fresno, CA 93721
Los Angeles: 300 South Spring Street, Los Angeles, CA 90013
Oakland: 1515 Clay Street, Suite 2000, Oakland, CA 94612
Sacramento: 1300 "T" Street, Sacramento, CA 95814
San Diego: 110 West "A" Street, Suite 1100, San Diego, CA 92101
San Francisco: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102

5. Clerk prepares a Clerk's Certificate of Service by Mail

6. Clerk prepares a "Prison Pack" consisting of the following documents:

- a. Certified copy of judgment of death;
- b. Certified, sealed copy of any abstract of judgment for other non-death counts;
- c. Certified, sealed copy of the sentencing minute order;
- d. Certified, sealed copy of the complaining – document(s) on which the defendant was convicted (complaint, information, indictment), including any amended version of same;
- e. Copy of the probation report;
- f. Any other document that the court specifically orders sent:
 - 1) Statements in aggravation/mitigation
 - 2) Medical reports
- g. Copy of the sentencing transcript

7. Prison pack plus the Sheriff's certified copy of the judgment of death is forwarded to the judgment processing section of the court.

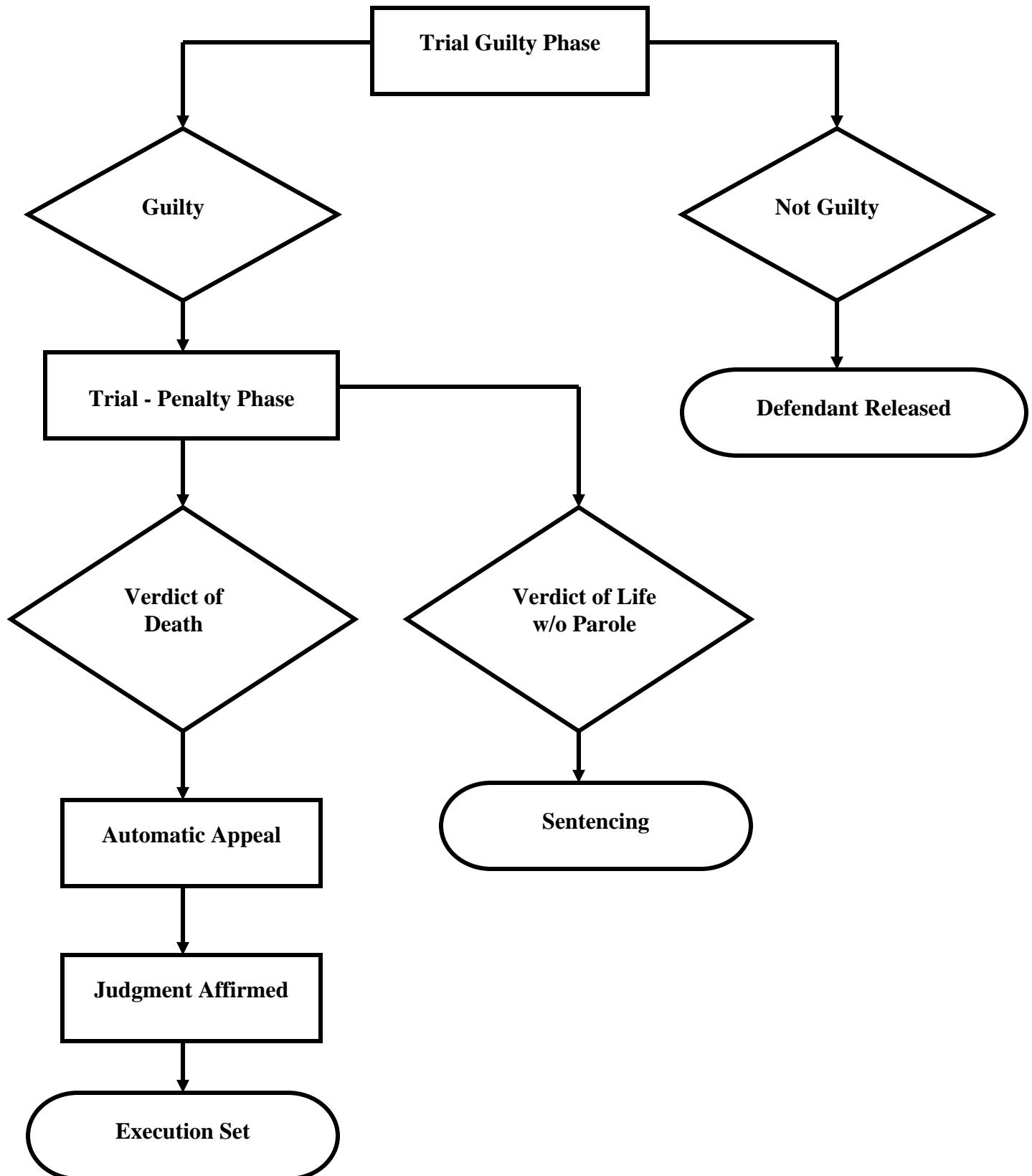
- a. Defendant must be delivered to the appropriate facility within 10 days of pronouncement of judgment.
- b. Male defendants are sent directly to California State Prison, San Quentin.
- c. Female defendants are sent directly to Central California Women's Facility, Chowchilla.

I. REIMPOSITION OF SENTENCE – DEATH WARRANT [PC 1193, PC 1227, CRC 4.315]

- 1. After affirmation of a death penalty sentence, the Court is required to set a date for the execution of the sentence. The date must be set at a public session of the court and allow at least 10 days for mailing of notices.
- 2. After date is set, the clerk shall mail notice of the date, time, and department of the hearing by first-class mail, postage prepaid.
 - a. The clerk must prepare and file a Clerk's Certificate of Service by mail.
 - b. No proceeding can be held to set the date of execution unless the record contains the clerk's certificate showing timely mailing.
 - c. Notice is mailed to:
 - 1) Attorney General
 - 2) District Attorney
 - 3) Defendant at the prison address
 - 4) Defendant's attorney [See CRC 4.315]
 - 5) Executive Director, California Appellate Project
- 3. The District Attorney informs the Court of a suggested execution date received from the prison facility where the defendant is housed. (San Quentin for men, Chowchilla for women)

4. At the hearing the Court:
 - a. Reimposes the sentence of death upon the defendant.
 - b. Makes and causes to be entered, an order pronouncing sentences against the defendant.
 - c. Minutes will reflect:
 - 1) A receipt of the Remittitur affirming the judgment of death
 - 2) The date of execution
 - 3) Order for the District Attorney to prepare the Death Warrant
5. After the hearing:
 - a. Death Warrant is signed by the judge (original + five (5) copies).
 - 1) The Death Warrant states the conviction.
 - 2) Sets the date for execution (not less than 60 nor more than 90 days from the date of the order.)
 - b. Distribution of Death Warrant
 - 1) Governor-registered mail [PC 1193, 1227]
 - 2) Attorney General
 - 3) Defendant
 - 4) Defendant's Attorney
 - 5) Warden at prison facility – registered mail [PC 1193, 1227]

J. TRIAL PHASES – DEATH PENALTY CASES



The following phrases are suggested for use in criminal minutes. They may be modified to fit the circumstances. The time has been deleted from the examples but would precede most entries. The suggested phrases are shaded in gray.

A. CASE CAPTION

List the case number, the case title, the attorneys appearing for each party, and the District Attorney's number for each defendant in criminal cases. Examples follow:

| | | |
|-------------|--|--------------|
| CR 123455 | The People of the State of California, Plaintiff, vs. | By: Don West |
| DA P0352401 | Miranda Applecart, Defendant. | By: Mae Cook |

Or

| | | |
|-------------|---|--|
| CR 123455 | THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, By Fred Schwartz, Dep. District Attorney vs. | |
| DA P0378801 | LANCE VINCENT, Defendant, By Jackson Wentworth, III, Retained and | |
| DA P0378802 | MARY WHITESON, Defendant By Wilson Poole, Dep Alternate Public Defender | |

Minute Order Openings

1. Minute openings should contain the following four items of information:
 - a. The name of the event (jury trial or court trial).
 - b. Wording that informs the reader whether this is an initial hearing (Ex: "This being the time set for...") or an ongoing matter (Ex: "This being the time previously set for further...").

- c. Where the case came from (“...having been assigned to this department by Department 9...” or “... having been continued from previous hearing date, ...).
- d. Names of all persons (including titles, if any, or the law firm if a private attorney) seated at counsel table. The plaintiff’s side is always listed first.

2. First Day Minute Order Opening:

This being the time set for jury trial in the above-entitled cause, having been assigned from the Presiding Department, Deputy District Attorney (Name) appears on behalf of the People. Deputy Public Defender (Name) appears on behalf of the defendant, who is personally present.

Or

This being the time set for court trial (long cause) in the above-entitled cause, having been assigned to this department by the Presiding Department, (Name), Deputy District Attorney, is present on behalf of the People. (Name), of Smith & Wesson, is present on behalf of the defendant. The defendant is personally present.

- a. Only need long or short cause on the first day of a court trial.
- b. You would also note the name and title, if any, of any other person seated with counsel.
- c. If an interpreter is present, include his/her name, the language being interpreted, and whether the interpreter is sworn or certified. Example:

The defendant is personally present, assisted by certified Spanish interpreter Mary Gonzales, oath on file.

3. Subsequent Days’ Opening:

This being the time previously set for further jury trial in the above-entitled cause, having been continued from date, Deputy District Attorney (Name) appears on behalf of the People. (Name), of Smith & Wesson, appears on behalf of the defendant, who is personally present.

“Convenes” vs. “In Session”

- 1. Court convenes at the start of each day.
- 2. Court reconvenes or “Court is in session” after a recess or at the start of the afternoon session.

“Recess” vs. “Adjourned”

1. At each break, the proceeding is suspended for a rest.

Court is in recess.

2. At the end of the day, the proceeding is suspended (adjourned) until a new time and date.

Court is adjourned until day, date, time, and department number.

Defendant's Custody Status

The defendant's custody status must be indicated at the conclusion of each day's minutes. It usually appears after adjournment and next court hearing information.

The defendant remains in custody with bail set at \$25,000.

The defendant remains at liberty on \$25,000 bond (or on O.R. release.)

“Is your true name _____?”

State the name as it appears on the pleading. If the defendant responds in the negative, establish his true name.

“Are you represented by _____?”

State the name of the attorney.

“Counsel, were you appointed or retained?”

“Counsel, I hand you a true copy of the Information (Indictment) and the transcript of the Preliminary Examination (Grand Jury Proceedings).”

Or

“Counsel, I hand you a true copy of the Information (Indictment). The transcript of the Preliminary Examination (Grand Jury Proceedings) is not available at this time. Do you waive receipt of the transcript for purposes of arraignment only?”

“Mr./Ms. (defendant’s true name as established), in an Information (Indictment) filed in this court on (date of file stamp), you were charged with violation of code name in count(s) _____.”

List all charges and identify by count number.

“It is further alleged that you have suffered _____ prior felony convictions.”

“Counsel, does the defendant waive formal reading of the Information (Indictment)?”

If the answer is “NO”, the clerk must read the accusatory pleading in its entirety.

“Is the defendant ready to enter a plea?”

“Mr./Ms. (defendant’s true name as established), how to you plead to the counts as charged?”

Plea must be entered aloud by the defendant, not counsel.

“Do you admit or deny the alleged prior felony convictions?”

“Your Honor, may the trial date be set for (date, time, place)? May the readiness conference be set for (date, time, place)?”

Some cases become such landmarks in law that their names are used as a shorthand reference for the central right or concept embodied in the ruling. For example, we all know that the reference to Miranda means that the defendant must be advised of certain rights at the time of arrest and before questioning. The following motions are listed in alphabetical order by their "case law" name.

ARANDA MOTION

PEOPLE V. ARANDA (1965) 63 CAL.2D 518

This motion concerns one defendant making an admission or confession and implicating a co-defendant. The motion will be brought by the co-defendant trying to minimize the damage of the statement. The Court may:

- Sever the two defendants and have separate trials;
- Permit a joint trial deleting the reference to the objecting co-defendant; or
- Not allow the statement to be used at all in the joint trial.
- Conduct a dual jury trial.

BALLARD MOTION

BALLARD V. SUPERIOR COURT (1966) 64 CAL.2D 159

A motion to order the prosecuting witness to submit to a psychiatric examination in certain cases where the testimony of the witness is uncorroborated, i.e., a rape case.

BEAGLE/CASTRO

PEOPLE V. CASTRO (1985) 38 CAL.3D 301

This is a motion to exclude evidence of prior convictions of a defendant where the probative value of the evidence concerning credibility is outweighed by the risk of undue prejudice. The Castro decision held that only priors which involve "moral turpitude" or the willingness to commit evil are admissible to impeach. For instance, it is argued that the possession of heroin does not involve moral turpitude but the possession for sale does.

Under Evidence Code 352, "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, or confusing the issues, or of misleading the jury." This code is often cited in rulings.

BLAKELY WAIVER

BLAKELY V. WASHINGTON (2004) 124 S. CT. 2531 (WASHINGTON STATE)

The Sixth Amendment right to a jury trial requires that any aggravating fact used to increase a defendant's sentence must be found by a jury, not a judge.

BOYKIN-TAHL MOTION OR MENDELLA MOTION

PEOPLE V. SUPERIOR COURT (MENDELLA) (1983) 33 CAL.3D 754

This is a defense motion to have the court strike a prior from the information/indictment so that the prior may not be used to enhance punishment. The attack on the prior is usually made on constitutional grounds, i.e., the defendant was not adequately advised of his/her rights and/or did not waive said rights on the record.

BUKER MOTION

BUKER V. SUPERIOR COURT (1972) 25 CAL.APP.3D 1085

A defense motion for the return of money seized from the defendant at time of arrest or during execution of a search warrant.

ELEAZER MOTION

ELEAZER V. SUPERIOR COURT (1970) 1 CAL.3D 847, (PC 1042)

This is a motion to require the prosecution to show the whereabouts of a confidential informant so that the defense may locate him. The court held that the prosecution must make a good faith effort to keep in touch with or to locate the witness so that he could be served with a subpoena to come to court.

EVANS MOTION

EVANS V. SUPERIOR COURT (1974) 11 CAL.3D 617

This is a defense motion to compel a corporeal (body) lineup prior to trial. Since the People have easy access to compelling a lineup, the court determined that the defense should have the same opportunity.

FARETTA MOTION

FARETTA V. CALIFORNIA 422 U.S. 806 (45L.ED.2D 562,95 S.CT.2525)

This is motion by the defendant in which he/she voluntarily and intelligently elects to represent himself/herself (In Persona Propria). This motion is heard and the Court must then make a ruling per Lopez.

HARVEY MOTION

PEOPLE V. HARVEY (1958) 156 CAL.APP.2D 516

PEOPLE V. MADDEN (1970) 2 CAL.3D 1017

This is a motion objecting to the testimony of an officer who was not the actual officer who established probable cause to search or arrest.

HITCH MOTION

PEOPLE V. HITCH (1974) 12 CAL 3D 641 OR

TROMBETTA MOTION

PEOPLE V. TROMBETTA (1985) 173 CAL.APP.3D 1093

This is a defense motion to suppress testimony based on evidence (such as a breath ampule, sperm, officer's notes, etc.) that was lost or destroyed by the prosecution or law enforcement agency. For example, this motion may be brought by a defendant wishing to suppress the results of a breath test in a driving under the influence case when a re-testable sample was not preserved by the law enforcement agency and supplied to the defense for independent testing.

KELLETT MOTION

KELLETT V. SUPERIOR COURT (1966) 64 CAL.2D 822

This is a motion to dismiss based on multiple prosecutions for indivisible acts. Essentially, it is to simplify the charges against the defendant instead of throwing the book at him.

KRAFT MOTION

PEOPLE V. KRAFT (1970) 3 CAL.APP.3D 890

OR

ROCHIN MOTION

ROCHIN V. CALIFORNIA (1952) 342 U.S. 165

This is a motion to suppress because of an alleged use of unnecessary force by police officers, such as using a chokehold to get heroin out of the mouth or arm-twisting to get a blood sample. This may also be a trial motion.

MARSDEN MOTION

PEOPLE V. MARSDEN (1970) 2 CAL.3D 118

Request by defendant to have court appointed counsel relieved. May be made at any stage of the proceedings. Defendant must give reasons as to how and why the attorney's representation is inadequate. (This hearing is conducted out of the presence of the prosecutor.)

MURGIA MOTION

MURGIA V. MUNICIPAL COURT (1975) 15 CAL.3D 286

This is a defense motion for the production of documents that would point to intentional discriminatory enforcement of penal laws. The defendant alleges that he/she is singled out as an individually selected class for special prosecutorial treatment. With such records, for example, the defense may statistically establish that prostitution statutes are enforced against women who engage in prostitution but not against their male clients.

Assuming that the discovery establishes that the prosecution is discriminatory, the defendant would proceed with a second motion to have the charges dismissed. If the

Court grants this motion, the effect is to dismiss the case and discharge the defendant, based upon the ruling in Murgia, supra: "If an individual can show that he would not have been prosecuted except for such invidious discrimination against him, a basic constitutional principle has been violated, and such a prosecution must collapse under the sands of prejudice."

PITCHESS MOTION

PITCHESS V. SUPERIOR COURT (1974) 11 CAL.3D 531

This is a defense motion to discover anything in the personnel file of an enforcement officer that discloses a propensity for violence, prior use of excessive force, ethnic or racial bias, or habitual lack of credibility on his part. It is most often brought by a defendant who is charged with resisting arrest or assaulting a police officer and who intends to rely on the theory of self-defense or excessive use of force during trial.

Since police personnel records are confidential under PC 832.8, the Court will examine the records in camera. At the hearing, the Court will either find the records (or parts of them) relevant and grant the motion for discovery (thereby ordering the production of records to the defense) or will find the records irrelevant to the pending case and will deny the motion. As personnel records are highly confidential, the clerk must take great care to protect them and see that they are handled as the Court directs.

ROMERO MOTION

PEOPLE V. SUPERIOR COURT (ROMERO) (1995) 40 CAL. APP. 4TH 183

OR

WILLIAMS MOTION

PEOPLE V. WILLIAMS (1995) 37 CAL. APP. 4TH 1737

This is a defense motion for the Court to exercise its discretion and dismiss a "strike" prior conviction allegation pursuant to PC 1385.

ROST OR SPEEDY TRIAL MOTION

ROST V. MUNICIPAL COURT (1960) 184 CAL.APP.2D 507

This is a motion to dismiss for lack of a speedy trial because the court failed to meet the statutory deadlines set in PC 1381, 1381.5, and 1382. These sections refer to when the defendant is already incarcerated on another case or when deadlines are not met on initial trial.

SERNA MOTION

SERNA V. SUPERIOR COURT (1985) 40 CAL.3D 239

Defense motion to dismiss based upon unexcused failure of police to service misdemeanor arrest warrant within one year of filing of the complaint. Establishes presumption that defendant's right to a speedy trial has been violated. This motion is heard in limited jurisdiction court only.

TWIGGS MOTION

TWIGGS V. SUPERIOR COURT (1983) 34 CAL.3D 360

The basis of this motion is that the district attorney is engaged in a "vindictive" prosecution. The ruling on this case arose because, after a mistrial, the district attorney offered a plea bargain, which was refused by the defendant. In return, the district attorney filed several additional charges against the defendant to add to the retrial.

This case also held that when a confidential informant is a material witness on the issue of guilt, the People must disclose his whereabouts to the defense or incur a dismissal. (See Eleazer.)

WADE/GILBERT MOTION

UNITED STATES VS. WADE (1967) 388 U.S. 218;

GILBERT VS. STATE OF CALIFORNIA (1967) 388 U.S. 263

This is a motion in which the defense seeks to suppress testimony regarding a pretrial identification lineup conducted by the police on the grounds that the lineup procedure was unfairly suggestive.

WHEELER MOTION

PEOPLE V. WHEELER (1978) 22 CAL.3D 258, 583 P.2D 748; 148 CAL.RPTR. 890

(CALIFORNIA CODE CITE: CCP 231.5)

(FEDERAL CASE: BASTON V. KENTUCKY)

(Note: this motion is heard during jury selection.)

This is a motion for mistrial based on discrimination during jury selection. The ruling on this case was the result of two black men being convicted of the murder of a white man by an all white jury. The district attorney in the case used peremptory challenges to strike all blacks from the jury.

The case holds that all defendants have a right to a jury that is as near an approximation of the cross section of the community as possible. Counsel's perception of potential jurors is the basis for valid peremptory challenges. Peremptory challenges cannot be used to strike jurors on the basis of group bias - a presumption by a party that certain jurors are

biased because they are members of an identifiable group based on race, religion, ethnic or other similar grounds.

Should it appear that counsel is tailoring the jury based on discrimination, opposing counsel must make a prima facie case of discrimination to the satisfaction of the court. The burden then shifts to the other party to show the peremptories were not based on group bias. If this burden is not met, the court must conclude the jury as it stands fails to comply with the representative cross section requirement. The court must dismiss the jury and any remaining prospective jurors, draw new jurors from a new panel, and start jury selection from the beginning. The defendant does not need to be a member of the excluded group to raise this objection.

A. SUPPRESSION MOTIONS

1. Motion to Suppress (PC 1538.5): Suppress evidence due to illegal search and seizure. A defense motion to return property or suppress evidence that was illegally obtained. When the search was without a search warrant it is the People's burden to show that the search or stop was reasonable. When the search was with a warrant the defense must show that the stop or search was illegal. Examples: search warrant is insufficient, seized items were not listed in search warrant, no probable cause for issuing search warrant or search warrant violated constitutional standards. The granting of the Motion to Suppress does not automatically dismiss a case. If enough evidence is ordered suppressed, the district attorney may opt to dismiss or amend.
2. Suppress evidence due to evidence lost or destroyed by the prosecution (Hitch motion)
3. Quash subpoena

B. DISCOVERY MOTIONS

- 1) Discovery Motion (PC 1054 - PC 1054.10): a motion to have the court order the production of information, documents, evidence that has not yet been provided to the opposing side, such as laboratory test results or the list of possible witnesses.
- 2) Discover information concerning police officer's past misconduct (Pitchess motion)
- 3) Discover confidential informant's identity (EC 1042)
- 4) Discover evidence to support defense of discriminatory enforcement (Murgia motion)
- 5) Ex Parte discovery orders
- 6) Appointment of experts (EC 730-733)
- 7) Acquire transcript of prior trial or hearing
- 8) Perpetuate testimony (PC 1335-1345, 1349-1362)
- 9) Compel the giving of fingerprints; blood, breath, or urine samples; voice sample

C. DISMISSAL MOTIONS

1. Motion to Demur – Demurrer-- (PC 1004 et seq.): Unlike the motions listed above, a demurrer is actually an objection, in writing, made prior to the entry of the plea, which raises issues of law as to the sufficiency of the accusatory pleading and specifically states the grounds of objection.

A demurrer is an objection and therefore the ruling must be either overruled or sustained.

overruled: (denied) - The defendant must enter a plea.

sustained: (granted) - With Leave to Amend: If the defect can be remedied, the D.A. must amend the accusatory pleading within 10 days. If not done timely, the action is dismissed.

sustained: (granted) - Without Leave to Amend - The demurrer is sustained and no amendment is permitted. The action is dismissed.

2. Dismiss in the interest of justice (PC 1385)
3. Motion to Set Aside Information (PC 995): Dismiss all or part of information/indictment. A defense motion to set aside an information/indictment or certain counts and allegations contained therein for statutory reasons. (Note: this motion is heard at the Felony Trial Court level.)
4. Disclose confidential informant (motion may result in a dismissal/ PC 1042)
5. Dismiss indictment because prosecutor did not inform grand jury of existence and nature of exculpatory evidence (Johnson motion)
6. Dismiss based on prosecution interference with right to counsel
7. Dismiss based on failure to prevent deportation of a material witness
8. Suppress evidence pursuant to PC 1538.5 (motion can result in a dismissal)
9. Dismiss based on discriminatory enforcement (Murgia motion)
10. Dismiss based on retaliatory prosecution (Twiggs motion)
11. Dismiss based on denial of speedy trial (Serna motion or Rost motion/PC 1382)
12. Dismiss based on prosecution's failure to maintain contact with witness (Eleazer motion)
13. Reduce felony to a misdemeanor [PC 17(b)]
14. Immunity grant

D. PROTECTIVE MOTIONS

1. Change of Venue Motion (PC 1033): a motion to move the trial to another venue (county) based on pretrial publicity
2. Motion to Sever -- Severance/Joinder : A motion to separate. The moving party requests that counts; cases; priors; and/or co-defendants be handled separately
3. Closed courtroom/seal records
4. Continuance (PC 1050)
5. Sequester jurors
6. Defendant's presence in court/wearing apparel/restraints
7. "Gag" order

E. MISCELLANEOUS MOTIONS

1. For interpreter
2. Bail/OR Release
3. Hold opposing or co-counsel in contempt
4. Be relieved as counsel
5. Amend complaint
6. Amend information
7. Enforce plea bargain
8. To have court appointed counsel relieved (Marsden motion)
9. Psychiatric examination of defendant (PC 1368; PC 1026)
10. For court reporter (In re Armstrong (1981) 126 Cal. App. 3d 565)
11. Recusal Motion: A motion to disqualify the prosecutor from the case based on an alleged conflict of interest that is likely to prevent the defendant from receiving a fair trial, e.g., the DA or close relative is a victim. Motion may be against an individual prosecutor or against the entire prosecutor's office in the county. A substitute prosecutor is brought in to handle the case in the event the motion is granted.

12. Motion to Continue (PC 1050): A motion to continue any hearing in a criminal proceeding, including the trial.

Written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued.

(PC 1050 (b)(1))

Affidavits or declarations detailing specific facts showing that a continuance is necessary shall be included in the written notice.

13. CCP 170.6: Peremptory challenge of a judge by either prosecutor or defense.
14. Marsden Motion Hearing: Request by defendant to have court appointed counsel relieved.
- a. Hearing is closed (out of the presence of the prosecutor).
 - b. Minutes only reflect the grant or denial of the motion, not the content.
 - c. Court reporter's notes are sealed after hearing (if court reporter present).
15. Motion to Consolidate (PC 954): to bring together two or more different cases or offenses.

A. FILES ARE HANDLED MORE FREQUENTLY.

Defendants appear once a week for the first phase of the program. Files are also called into court often (even when not on calendar) for dirty tests, sanctions and change of terms. In some cases the best course is to keep the files in the courtroom.

B. SEPARATE FILES ARE KEPT CONTAINING THE PROGRESS REPORTS FROM THE COUNSELORS.

These confidential reports are either kept as a separate file or placed in the court file and are used by the judge to monitor the defendant's progress. The judge may not review the actual court file but rely solely on these reports.

C. APPEARANCE DATES ARE DETERMINED BY LISTS RECEIVED FROM COUNSELORS.

The computer-generated calendar is seldom used to organize files. A list (generally faxed) from the counselors is used to determine which clients are to be seen by the judge. hearings are also rescheduled at the request of the counselors.

D. UNIQUE JAIL ORDERS ARE GENERATED.

When a defendant is sanctioned for violation of Drug Court rules, a jail order maybe required. Sanctions are typically short in duration. (Often a weekend with a Sunday release.) These jail commitments are done often without revoking probation and keeping review dates set.

E. DRUG COURT RELEASES.

A feature unique to Drug Court is the release of defendants who are in custody directly from the courtroom. A special jail order instructing the jail to dress the defendant and transport his property for release from court is required.

F. PREPARATION OF "NA" SHEETS.

The courtroom clerk prepares NA sheets for the defendants to take to meetings to monitor their attendance during the course of the Drug Court program. The number of required meetings may vary from court to court and defendant to defendant.